

The Gazette



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NOTICE

The undermentioned Gazettes of India Extraordinary were published during the week ending the 2nd May 1951 :—

Issue No.	No. and Date	Issued by	Subject
57	S. R. O. 580, dated the 25th April 1951.	Ministry of Food and Agriculture.	Amendment in the Sugar and Gur Control Order 1950.
	S. R. O. 581, dated the 25th April 1951.	Ministry of Labour.	Minimum rates of wages payable in respect of certain classes of employees working under the C. P. W. D. on road construction or in building operations within the State of Delhi.
58	S. R. O. 609, dated the 27th April 1951.	Ministry of Commerce and Industry.	Further amendments in the Cotton Textiles (Control) Order, 1948.
59	S. R. O. 610, dated the 28th April 1951.	Ministry of Finance (Revenue Division).	Prohibition of taking certain pictures out of India.
	S. R. O. 611, dated the 27th April 1951.	Ministry of Communications.	Further amendments in the Indian Post Office Rules, 1933.
60	S. R. O. 612, dated the 28th April 1951.	Ministry of Finance (Revenue Division)	Further amendments in the Central Excise Rules, 1944.
	S. R. O. 613, dated the 28th April 1951.	Do.	Cancellation of Ministry of Finance (Revenue Division) Notification No. 5—Central Excises, dated 1st March 1951.
	S. R. O. 614, dated the 28th April 1951.	Do.	Substitution of "fourteen annas" for "eight annas" in the Ministry of Finance (Revenue Division) Notification No. 12—Central Excises, dated 7th April 1951.

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of this Gazette.

PART II—Section 3

Statutory Rules and Orders issued by the Ministries of the Government of India (other than the Ministry of Defence) and Central Authorities (other than the Chief Commissioners).

MINISTRY OF LAW

New Delhi, the 1st May 1951

S.R.O. 620.—In exercise of the powers conferred by clause (1) of article 299 of the Constitution, the President hereby directs that the following further amendments shall be made in the notification of the Government of India in the Ministry of Law No. F. 35-I/50-L dated the 26th January 1950 relating to the execution of contracts and assurances of property, namely:—

1. In part IV of the said notification:—

(i) After the words "In the case of the Ministry of Communications:—", the following shall be inserted, namely:—

"A.—Security bonds for the due performance of their duties by Government servants; *by the Secretary, Joint Secretary or Deputy Secretary to the Central Government in the Ministry of Communications.*"

(ii) Existing Heads A to F shall be relettered as B to G respectively.

2. In part IX of the said notification, in item 3, after the words "or the Controllers" the words "or the Junior Controllers" shall be inserted.

3. In part XVII of the said notification:—

(i) Under Head A, in item 34 for the words "*by the Secretary to the Railway Board*", the following shall be substituted, namely:—

"*By a Director, Joint Director, Deputy Director or Assistant Director in the Railway Board.*"

(ii) Under Head B, in item 7 for the words "*by the Secretary to the Railway Board*", the following shall be substituted, namely:—

"*by a Director, Joint Director, Deputy Director or Assistant Director in the Railway Board.*"

[No. F.35-I/51-L.]

SHRI GOPAL SINGH, Dy. Secy.

MINISTRY OF HOME AFFAIRS

New Delhi, the 30th April 1951

S.R.O. 621.—In pursuance of article 125 of, and sub-paragraph (4) of paragraph 9 of Part D of the Second Schedule to, the Constitution, the President is pleased to make the following rules, namely:—

1. (i) These rules may be called the Supreme Court Judges (Travelling Allowance) Rules, 1951.

(ii) They shall be deemed to have come into force on the 26th January 1950.

2. In these rules unless the context otherwise requires "Judge" means a Judge of the Supreme Court and includes the Chief Justice, an acting Chief Justice and Judge appointed under article 128 of the Constitution.

3. When a Judge of a High Court is appointed to be a Judge of the Supreme Court, he is entitled in respect of his journey to join his new post to draw travelling allowance at the rates and to enjoy travelling facilities specified in rule 7 of the High Court Judges (Part A States) Travelling Allowance Rules, 1950.

4. (i) When a Government servant, appointed to be a Judge, travels by railway to join his post, he may, at his option and in lieu of drawing travelling allowance under the rule governing a journey on transfer applicable to him, travel in a reserved first class compartment.

(ii) A Government servant who avails himself of this concession must pay to Government the fare which he would have paid if no accommodation had been reserved, and must, in addition, pay in cash to the station master of the Station

from which the journey commences, the fares for any members of his family accompanying him, whether they share his reserved accommodation or not. When Government pays full tariff rates for the accommodation, all such fares shall be credited to Government.

5. When a person not already in Government service is appointed to be a Judge, he may, when travelling by railway to join his post, travel in a reserved first class compartment on the conditions prescribed in sub-rule (ii) of rule 4.

Provided that, if any such person is appointed to be the Chief Justice, he may travel in an inspection carriage.

6. When a person, who has held the office of a Judge of the Supreme Court or of the Federal Court, is requested to sit and act as a Judge of the Supreme Court under article 128 of the Constitution, he may, when travelling by railway to join his temporary post, or on vacating it, travel in a reserved first class compartment subject to the conditions prescribed in sub-rule (2) of rule 7.

7. (1) When a Judge travels on duty, he is entitled:—

(a) When travelling by railway, to one reserved first class compartment and the fares at the lowest class rates actually paid for servants not exceeding four in number;

Provided that the Chief Justice or an acting Chief Justice will, if he so chooses, be ordinarily provided with an inspection carriage, in which case however, the Chief Justice or the acting Chief Justice shall not be entitled to any fares for the servants;

(b) when travelling by a public air transport services to the fare paid for himself and, if actually paid, the cost of transporting up to two maunds of luggage by rail at passenger rates, or steamer and the railway or steamer fares of the lowest class for servants not exceeding four in number, and the expenditure actually incurred on the transport by road of servants or luggage upto a maximum of 8 annas per mile of that part of the journey by road for which no allowance is claimed under clause (c) of this sub-rule;

(c) when travelling by road, to an allowance at the rate of one rupee per mile;

Provided that no such allowance shall be payable in respect of that portion of a journey by road for which a public air transport service provides its own transport and the fare for which journey is included in the air fare paid under clause (b) for the air journey;

(d) to a travelling allowance limited to the actual expenses incurred by the Judge not exceeding one-half of first class railway fare in the case of rail journeys:

Provided that no such allowance shall be admissible where the Chief Justice or an acting Chief Justice travels in an inspection carriage;

(e) to a daily allowance in respect of any period of halt on duty outside Delhi or such other place as may for the time being be the headquarters of the Supreme Court (including Sundays and other holidays) at the following rates, namely:—

(i) in the case of the Chief Justice or an acting Chief Justice, at the rate of Rs. 15/-, if the Chief Justice or the acting Chief Justice stays in an inspection carriage, and at the rate of Rs. 25/-, if he stays in any hotel or other place;

(ii) in the case of a Judge, at the rate of Rs. 15/-;

(f) to the expenditure, if any, actually incurred on the transport by passenger train or steamer at owner's risk of a motor car, and the fare at the lowest class rate actually paid to a railway or steamer service in respect of one driver or cleaner for the car;

(g) to the actual freight paid for the transport of personal effects not exceeding the freight chargeable for transporting by goods train personal effects weighing 60 maunds:

Provided that no freight shall be payable for any personal effects which are capable of being carried in an inspection carriage.

(2) If any persons (other than servants) accompany a Judge in the accommodation reserved for him under sub-rule (1), fares shall be payable by him on their account, and the fares so paid shall, if full tariff rates have been paid by Government for the reserved accommodation, be credited to Government

(3) For the purpose of sub-rule (1) of this rule:—

- (a) all journeys to and from headquarters shall be deemed to commence and terminate at the Judge's residence at headquarters or as the case may be, at an out-station. For short journeys by road within five miles of the Judge's residence at headquarters no mileage allowance will be admissible unless the Judge actually proceeds to a place outside the five-mile radius. At an out-station, no mileage allowance in addition to a daily allowance to which a Judge may be entitled, will be admissible for short road journeys within five miles of the Judge's temporary residence;
- (b) "actual expenses" mean the ordinary and normal expenses incidental to the journey and include any charge for a ferry, payment of tolls, amount spent on transport of camp equipment but do not include such other charges as hotel charges, rent for occupying a traveller's bungalow, cost of refreshments, charges for carriage of stores or conveyance or presents to coachmen or tips to bearers or any other allowance for such incidental losses or expenses as the breakage of crockery, wear and tear of furniture and the employment of additional servants;
- (c) when the period of halt during the day (a day being counted from midnight to midnight) is not less than six hours, it shall count as one day, and if it is less than six hours, it shall count as half day;
- (d) when the period of continuous halt at any place exceeds ten days, but does not exceed thirty days, daily allowance shall be admissible at full rate for the first ten days and at three-fourths of the rates for any subsequent days.

8. (1) When a Judge:—

- (a) proceeds on, or returns from, leave, or
- (b) proceeds on, or returns from vacation spent in or outside India, or
- (c) retires from service, or
- (d) proceeds to join another post after resigning office, he may, when travelling in a railway, travel in a reserved first class compartment subject to the conditions prescribed in sub-rule (2) of rule 7:

Provided that the Chief Justice may travel in an inspection carriage, if one is available.

(2) The facilities provided under this rule will be available up to and from the place of embarkation or disembarkation or the place where the Judge ordinarily resides in India, as the case may be.

[No. 12/2/50-Judl.]

S. B. BAPAT, Jt. Secy.

MINISTRY OF FINANCE

(Department of Economic Affairs)

New Delhi, the 24th April 1951

S.R.O. 622.—In pursuance of sub-section (4) of section 6 of the Rehabilitation Finance Administration Act, 1948 (XII of 1948), the Central Government hereby nominates Shri S. L. Salwan and Shri Amolak Chand as members of the Advisory Board of the Rehabilitation Finance Administration, vice Sardar Ishar Singh, deceased, and Shri Mahavir Tyagi, resigned.

[No. 10(12)-F.I/50.]

New Delhi, the 28th April 1951

S.R.O. 623.—In exercise of the powers conferred by section 20 of the Indian Coinage Act, 1906 (III of 1906), the Central Government hereby directs that the following amendment shall be made in the notification of the Government of India in the late Finance Department No. D. 1506-F, dated the 12th February, 1942, namely:—

In Part II of the Schedule annexed to the said Notification after entry 15 the following entry shall be added, namely:—

16. The Bank of Rajasthan.

[No. F.1(3)-F.I/50.]

S. K. SEN, Dy. Secy.

1096

CENTRAL BOARD OF REVENUE

INCOME-TAX

New Delhi, the 30th April 1951

S.R.O. 624.—In exercise of the powers conferred by sub-section (1) of section 59 of the Indian Income-tax Act, 1922 (XI of 1922), the Central Board of Revenue direct that the following further amendments shall be made in the Indian Income-tax Rules, 1922, the same having been previously published as required by sub-section (4) of the said Section, namely:—

In the Assessment Form appended to rule 20 of the said Rules—

In Part II:—

(a) for items (e) and (f), the following items shall be substituted, namely:—

“(e) Interest on tax-free securities.

(f) Income accruing or arising in the State of Jammu and Kashmir which is exempt unless brought into the territory of India other than the said State.”

(b) after item (j), the following item shall be added, namely:—

“(k) Other items, if any”

(2) In Part III—

(a) under the heading “Add”—

in the entry “Additional income-tax payable by an Indian company.....” the words “an Indian” shall be substituted by the article “a”.

(b) Under the heading “Deduct”—

(i) in the entry “Rebate of income-tax payable by an Indian company.....” the words “an Indian” shall be substituted by the article “a”.

(ii) the words “Tax paid in Mysore State, Civil and Military Station, Bangalore or in an administered area” shall be omitted.

(iii) at the end, the words and letters “Rebate on income arising in—

(a) merged territories

(b) Part B States”

shall be inserted.

[No. 34.]

S. P. LAHIRI, Secy.

MINISTRY OF COMMERCE AND INDUSTRY

New Delhi, the 5th May 1951

S.R.O. 625.—In exercise of the powers conferred under clause (b) of sub-section (3) of section 4 read with Sub-section (2) of section 5 of Central Silk Board Act, 1948 (LXI of 1948), the Central Government hereby nominates Mr. S. K. Datta, I.C.S., Deputy Secretary in the Ministry of Commerce & Industry as a member of the Central Silk Board vice Mr. B. K. Kaul, I.C.S., resigned.

[No. 26/7-T. & P./49]

A. S. LALL, Joint Secy.

IMPORT TRADE CONTROL

New Delhi, the 27th April 1951

S.R.O. 626.—In exercise of the powers conferred by sub-section (i) of Section 3 of the Imports and Exports (Control) Act, 1947 (XVIII of 1947), the Central Government hereby directs that the following further amendment shall be made in the Notification of the Government of India in the late Department of Commerce Notification No. 23-ITC/43 dated the 1st July, 1943, as subsequently amended, namely:—

In part V of the Schedule annexed to the said Notification, for the existing entry against Serial No. 50, the following shall be substituted, namely:—

“Hair and Woollen Yarn exclusively used for the manufacture of hair belting”.

[No. 17-ITC/51.]

R. DORAISWAMY, Dy. Secy.

New Delhi, the 27th April 1951

S.R.O. 627.—In exercise of the powers conferred by clause (C) of Section 13 of the Supply and Prices of Goods Act, 1950 (LXX of 1950), and other powers enabling it in this behalf, the Central Government hereby directs that the following amendment shall be made in the notification of the Government of India in the Ministry of Commerce and Industry No. S.R.O. 170, dated the 1st February, 1951, namely:—

In the said notification after the words "sole crepe rubber" the words "and latex" and after the words "from the State of Travancore-Cochin" the words "and the district of Malabar in the State of Madras" shall be inserted.

ORDER

ORDERED that a copy of the above Notification be communicated to all Governments of Parts A and B States (except Jammu and Kashmir); all Chief Commissioners of Part C States including Andaman and Nicobar Islands; all Ministries of the Government of India; Cabinet Secretariat; Prime Minister's Secretariat; Secretary to the President; the Indian Trade Commissioners; all Indian Embassies; the High Commissioner for India, London; His Majesty's Trade Commissioner in India; all Chambers of Commerce and Associations; the Director General of Commercial Intelligence and Statistics, Calcutta; the High Commissioner for India in Pakistan, Karachi; the High Commissioner for Pakistan in India, New Delhi; the Secretary, Indian Tariff Board and the Secretary, Planning Commission.

ORDERED also that it be published in the *Gazette of India*.

[No. 16(1)-PC/50.]

B. B. SAKSENA, Dy. Secy.

TARIFF VALUATIONS

New Delhi, the 2nd May 1951

S.R.O. 628.—In exercise of the powers conferred by sub-sections (2) and (3) of section 2 of the Indian Tariff Act, 1934 (XXXII of 1934), the Central Government hereby directs that the following amendments shall be made in notification of the Government of India in the late Ministry of Commerce No. 73-T(8)/50 dated the 23rd December, 1950, namely:—

In column 2 of Section II, of the Schedule annexed to the said Notification against Item 8(2)—

- (i) For sub item (b) 'Hard Shell' in sub-head (ii) under 'Almonds' the word '(b) Others' shall be substituted.
- (ii) For the words 'cases' wherever they occur the words 'parcels' shall be substituted.

[No. 73-T(8)/50.]

S. BHOOHALINGAM, Joint Secy.

Bombay, dated the 5th May 1951

S.R.O. 629.—In pursuance of clause 4 of the Cotton Textiles (Export Control) Order, 1949, I hereby exempt all cloth and yarn sold by producers for export to Nepal and to the Portuguese Possessions in India against Release Orders issued by the Textile Commissioner from the provisions of the above clause.

[No. 32/6-Tex.2/50-CT.]

T. P. BARAT, Textile Commissioner.

New Delhi, the 5th May 1951

S.R.O. 630.—In exercise of the powers conferred by sub-clause (1) of clause 5 of the Cotton Textiles (Export Control) Order, 1949, the Central Government hereby directs that the following further amendment shall be made in the Government of India, late Ministry of Commerce notification No. 67-CW(25A)/48, dated the 28th March 1951, namely:—

In the said notification, in paragraph 6 after item (v), the following item shall be added, namely:—

- "(w) cloth and yarn sold by producers for export to Nepal or to the Portuguese Possessions in India against Release Orders issued by the Textile Commissioner".

[No. 32/6-Tex.2/50-CT(I).]

S. A. TECKCHANDANI, Under Secy.

MINISTRY OF FOOD AND AGRICULTURE**(Agriculture)***New Delhi, the 25th April 1951.*

S.R.O. 631.—Under Section 4 (ii) of the Indian Cotton Cess Act, 1923 (XIV of 1923), the Central Government are pleased to re-nominate Shri B. N. Uppal, Director of Agriculture, Bombay to represent the Department of Agriculture, Bombay State on the Indian Central Cotton Committee with effect from the 1st April, 1951.

2. Under Section 4 (iv) of the Indian Cotton Cess Act 1923 (XIV of 1923), the Central Government are pleased to nominate Shri Vitthal N. Chandavarkar C/o M/s. N. Sirur and Co. Ltd., Temple Bar Building 70 Forbes Street, Fort Bombay to represent the Bombay Mill Owners' Association, Bombay, with effect from the 1st April, 1951.

3. Under section 4 (v) of the Indian Cotton Cess Act 1923 (XIV of 1923), the Central Government are pleased to re-nominate Shri Kisan Lal Goenka, Proprietor, Savatram Ram Prasad Mills, Akola (Berar) to represent the cotton Manufacturing and Ginning Industry in Madhya Pradesh on the Indian Central Cotton Committee, Bombay with effect from the 1st April, 1951.

4. Under Section 4 (viii) of the Indian Cotton Cess Act, 1923 (XIV of 1923) the Central Government are pleased to re-nominate Shri P. S. Patil, M.L.A., Chikli Buldana District (Berar), and Shri S. K. Wankhede Bar-at-Law, Civil Lines, Nagpur to represent the Cotton Growing Industry in Madhya Pradesh on the Indian Central Cotton Committee, Bombay, with effect from the 1st April, 1951.

5. Under Section 4 (viii) of the Indian Cotton Cess Act, 1923 (XIV of 1923), the Central Government are pleased to re-nominate Shri F. B. Loxmeshwar, Kurtakoti, Gadag Taluka, Dharwar District to represent the Cotton Growing Industry, Bombay on the Indian Central Cotton Committee with effect from the 1st April, 1951.

[No. F.1-6/51-CJ.]

S.R.O. 632.—In exercise of the powers conferred by Section 4 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), the Central Government hereby directs that the power to make orders under sub-section (i) of Section 3 of the said Act, to provide for matters specified in clause (d) of sub-section (2) thereof shall, in relation to cottonseed, be exercisable in the State of Madras also by the Government of Madras, subject to the condition that orders made by the said Government in exercise of the aforesaid powers shall have effect, in so far as they cover the movements of cottonseed from the districts of Bellary, Anantapur, Cuddapah and Kurnool to places outside the area covered by those districts, and in so far as they are not repugnant to any orders made under the said section by the Central Government.

[No. F. 10-1/51-C.J.]

P. M. DAS GUPTA, Dy. Secy.

New Delhi, the 27th April 1951

S.R.O. 633.—In exercise of the powers conferred by Section 4 of the Essential Supplies (Temporary Powers) Act 1946 (Act No. XXIV of 1946), the Central Government hereby directs that the powers conferred on it by Section 3 of the said Act shall in relation to the production, supply, and, distribution of hay in the State of Bombay be exercisable also by the Government of Bombay for a period of three months from the date of the publication of this notification.

[No. F. 16-2/51-EP.]

ORDER*New Delhi, the 27th April 1951*

S.R.O. 634.—In exercise of the powers conferred by section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), the Central Government hereby makes the following order, namely:—

1. *Short title, extent, commencement and duration.*—(i) This order may be called the Cattle Fodder (Kadbi) Control Order, 1951.

(ii) It extends to the whole of the State of Bombay.

(iii) It shall come into force at once and shall remain in force up to and inclusive of the 30th September, 1951.

2. *Definitions.*—In this order, unless there is anything repugnant in the subject or the context:—

- (a) 'controlled area' means the districts of Sholapur, Poona, Bijapur, Dharwar, Belgaum and East Khandesh;
- (b) 'district' means any of the districts specified in clause (a);
- (c) 'district magistrate' means the district magistrate of the district concerned.
- (d) 'export' means—
 - (i) to take out of the controlled area by land, air or water to any place outside such area; or
 - (ii) to transport, in transit, within the controlled area from any place outside such area to any other place beyond such area.
- (e) 'Kadbi' means the kadbi variety of cattle fodder.

3. *Prohibition against export of Kadbi.*—Except under and in accordance with the conditions of a permit issued by the district magistrate or any officer authorized by him in this behalf, no person shall export or attempt to export any kadbi.

4. *Cordon areas in a district.*—(1) A district magistrate may, by notification in the Official Gazette, notify any area in his district as a cordon area for the purposes of this order.

(2) On the issue of a notification under sub-clause (1), no person shall, notwithstanding anything contained in clause 3, remove kadbi from any place in the district to any place in the cordon area except under and in accordance with the conditions of a permit issued by the district magistrate or any officer authorized by him in this behalf.

5. *Declaration of stocks.*—Every person holding stocks of kadbi in the controlled area, whether on his own account or on account of or on behalf of any other person or in partnership with any person shall, if so directed by the district magistrate by notice in writing, declare within the period specified in the notice, the said stock to the district magistrate or an officer authorized by him in this behalf and shall furnish to the district magistrate or such officer within the aforesaid period such other information in respect of the said stocks as the district magistrate may require in such notice.

6. *Restrictions on disposal of kadbi.*—No person holding stocks of kadbi whether on his own account or on behalf of any other person or in partnership with any person shall, if a notice in writing is served upon him in this behalf, use, remove, sell or otherwise dispose of such stocks or cause the same to be used, removed, sold or disposed of, save under and in accordance with the conditions contained in a permit issued by the district magistrate.

7. *Sale of Kadbi to specified persons.*—(1) A district magistrate may by notice in writing direct any person or class of persons holding stocks of kadbi that he or they shall sell the whole or specified part of such stock to such officer or other person as may be specified in the notice.

(2) Every notice issued under sub-clause (1) shall specify the price at which the stock shall be sold, the person or class of persons to whom the stock shall be delivered and the date before which the delivery shall be made.

8. *Power to enter and seize.*—If any person fails to comply with a notice issued under clause 7, the district magistrate or any officer authorized by him in this behalf may enter upon the land or premises and take possession of kadbi in respect of which the notice was given and sell or cause to be sold such stock to the person specified in the notice.

9. *Disposal of sale proceeds.*—The sale proceeds of any sale affected under the provisions of clause 8 shall, after deducting the cost of the sale, be paid to the person from whom the stock was seized or if such person is being prosecuted for any contravention of this order, be deposited in court.

10. *Means of service of notice.*—Every notice issued under this order shall—

- (a) in the case of a notice affecting a class of persons, be notified in the Official Gazette; and
- (b) in the case of a notice affecting an individual person be served on such person—
 - (i) by delivering or tendering it to that person, or

- (ii) if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the premises in which that person lives and the written report whereof should be witnessed by two persons living in the neighbourhood.

11. *Penalty*.—A court trying any contravention of this order may, without prejudice to any other sentence which it may pass, direct that any kadbi in respect of which it is satisfied that such contravention has occurred shall be forfeited to the Government.

12. *Saving*.—Nothing in this order shall apply to any export or removal of kadbi by or on behalf of Government or under and in accordance with a Military Credit Note.

13. *Repeal*.—The Cattle Fodder (Kadbi) Control Order, 1951, dated the 4th February, 1951, is hereby repealed, except as respects things done or omitted to be done before the commencement of this order.

[F. 16-2/51-EP.]

J. S. RAJ, Under Secy.

MINISTRY OF HEALTH

New Delhi, the 1st May 1951

S.R.O. 635.—In exercise of the powers conferred by sub-section (1) of section 32 of the Dentists Act, 1948 (XVI of 1948), the Central Government hereby appoints Dr. P. L. Khurana, L.R.C.P. (Edin), L.R.C.S. (Edin), L.D.S., R.C.S. (Edin), President, Delhi State Branch, of the All India Dental Association, as a member of the Registration Tribunal for the State of Delhi, vice Dr. A. P. Mathur deceased.

[No. F.10-10/48-MI.]

S. DEVANATH, Under Secy.

MINISTRY OF EDUCATION

ARCHAEOLOGY

New Delhi, the 28th April 1951

S.R.O. 636.—In exercise of the powers conferred by sub-section (3) of Section 3 of the Ancient Monuments Preservation Act, 1904 (VII of 1904), the Central Government is pleased to confirm its notification in the Ministry of Education No. F. 4-8/50-A. 2, dated the 13th November 1950 declaring the ancient monument (megalithic cairn with stone circles) described therein to be a protected monument within the meaning of the said Act.

[No. F.4-8/50-A.2.]

BINA CHATTERJEE, Under Secy.

MINISTRY OF REHABILITATION

New Delhi, the 10th April 1951

S.R.O. 637.—In exercise of the powers conferred by section 4 of the Influx from Pakistan (Control) Act, 1949, (XXIII of 1949), the Central Government hereby directs that the following further amendment shall be made in the Permit System Rules, 1949, namely:—

In rule 29 of the said rules, after sub-rule (4) the following sub-rule shall be inserted, namely:—

- “(5) Notwithstanding anything contained in sub-rule (4) the authority cancelling a permit may at any time direct that the person whose

permit is cancelled shall be taken into custody and expelled from India."

[No. III/PMT(X-105)/50-N(3).]

V. D. DANTYAGI, Joint Secy.

MINISTRY OF TRANSPORT

PORTS

New Delhi, the 27th April 1951

S.R.O. 638.—In pursuance of section 9 of the Madras Port Trust Act, 1905 (Madras Act II of 1905), the names of the following persons who have been elected as Trustees of the Port of Madras for a period of two years from the 11th April 1951 are hereby published for general information:—

Shri T. K. Singaram	} Elected by the Southern India Chamber of Commerce.
Shri M. M. Syed Mohamed Rowther	
Shri P. Lakshmipathy	
Shri V. Pandurangiah.	

[No. 13-P.I(15)/51-A.]

S.R.O. 639.—In pursuance of section 9 of the Madras Port Trust Act, 1905 (Madras Act II of 1905), the name of the following person who has been elected as a Trustee of the Port of Madras for a period of two years from the 18th April 1951 is hereby published for general information:

Shri Narandas J. Dutia—Elected by the Southern India Chamber of Commerce.

[No. 13-P.I(15)/51-B.]

New Delhi, the 30th April 1951

S.R.O. 640.—In pursuance of sub-section (2) of section 6 of the Calcutta Port Act, 1890 (Bengal Act III of 1890), the names of the following persons who have been elected as Commissioners of the Port of Calcutta for a period of two years are hereby published for general information:—

1. Mr. R. J. Clough	} Elected by the Bengal. Chamber of Commerce.
2. Mr. E. J. Pakes	

[No. 9-P.I(22)/51.]

T. S. PARASURAMAN, Dy. Secy.

MINISTRY OF WORKS, PRODUCTION & SUPPLY

New Delhi, the 30th April 1951

S.R.O. 641.—In pursuance of clause (a) of sub-section (2) of section 27A of the Indian Boilers Act, 1923 (V of 1923), the Central Government is pleased to nominate Shri C. C. Desai, I.C.S., to be Chairman of the Central Boilers Board, *vice* Shri B. K. Gokhale, I.C.S.

[No. M/BL-308(15).]

S.R.O. 642.—In exercise of the powers conferred by clause (c) of sub-section (2) of section 27A of the Indian Boilers Act, 1923 (V of 1923), the Central Government hereby nominates Mr. N. R. Mohindra, Officiating Chief Inspector of Boilers, Factories and Electrical Inspector, Delhi and Ajmer, to be a member on the Central Boilers Board *vice* late Mr. R. N. Mathur.

[No. M/BL-308(16).]

N. P. DUBE, Under Secy.

MINISTRY OF LABOUR

New Delhi, the 25th April 1951

S.R.O. 643.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to publish award of the Industrial Tribunal, Calcutta, in the industrial dispute between banking companies and their workmen in the State of Madras.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA.

6, ESPLANADE EAST, CALCUTTA-I.

Before Shri K. S. Campbell-Puri, B.A., LL.B., Chairman.

AWARD

Bank disputes in the States of Madras, Mysore and Travancore-Cochin:

Under Notification No. LR-2(273), dated the 21st February 1950, the Central Government referred to this Tribunal for adjudication the industrial disputes that had arisen after 13th June 1949 or were apprehended between the employees of the Banks, specified in Schedule I of the said Notification and their Employers, in respect of matters specified in Schedule II thereof.

Notices were issued to the Banks—

- (1) directing them to give due publicity to the Notification among their employees;
- (2) directing the employees to file statements of claim in the office of the Tribunal by 15th March 1950 and to furnish copies thereof to the employers on the same day;
- (3) directing the Banks to file their written statements within ten days thereof, with copy to the employees; and
- (4) directing the Banks to report for record to this Tribunal as to the manner in which due intimation had been given to the employees.

Notices were also issued to the Bank Employees' Unions to file their statements of claim.

Statements of claims were received from the employees of different Banks—from Head Offices as well as branch offices—and also from the Unions and Written Statements were duly filed by the Banks concerned.

The hearing of disputes emanating from the States of Madras, Mysore and Travancore-Cochin came up at Bangalore in the month of February from 6th to 12th and from 13th to 19th February at Trivandrum. The representatives of Imperial Bank of India, Central Bank of India, Eastern Bank Ltd., Punjab National Bank Ltd., Bharat Bank Ltd., Canara Bank Ltd., Canara Industrial and Banking Syndicate and Indian Overseas Bank Ltd. as well as the representatives of Imperial Bank of India Indian Staff Association, Madras, Indian Bank Employees Union, Madras, Madras Provincial Union of Bank Employees, Madras, Indian Overseas Bank Employees Union, Madras, All Travancore Bank Employees Union, Trivandrum and others attended the proceedings at Bangalore and Trivandrum. Some individual cases were also heard and the applicants present in person addressed the Tribunal or through their authorised Counsel. This award shall govern the complaints of employees of the Banks mentioned above and the same are hereby adjudicated upon *ad seriatim* according to the Cause List.

Reference No. 1 of 1950.

IMPERIAL BANK OF INDIA

APPEARANCES: Shri A. J. Louls, Secretary, Imperial Bank of India Indian Staff Union, Madras.

Shri S. K. Bhimsena Rao in person,

Shri Nittoor Sreenivasa Rau with Shri V. L. Narasinha Murthi and Shri Ratna Bai Chittoor, Advocates for Shri S. K. Bhimsena Rao,

Shri A. S. Jeffares of Messrs. King & Patridge, Solicitors, for the Imperial Bank.

S. K. Bhimsena Rao.—This case came up for hearing on the very first day but the Counsel for the Bank raised a preliminary objection to the effect that this Tribunal has no jurisdiction over a Bank or a Branch thereof situated in Part 'B' States which have acceded to India but did not merge therein. The Union representative prayed for an adjournment and with the consent of the parties the case was adjourned to the following day and arguments were heard on the preliminary objection at some length. It was urged on behalf of the Bank that the cause of action arose in this case on 13th August 1949 when the jurisdiction of the Tribunal was not extended to Part B States under the Industrial Disputes Act of 1947 and as such this case was not triable by the Tribunal. Reliance was placed on the Interim Award of the All India Industrial Tribunal (Bank Disputes), Bombay, dated 26th December 1949 wherein it was held that the Industrial Disputes Act of 1947 extends to "all the Provinces of India" and it cannot be said that the connotation of the word 'Province' as used in Section 1(2) of the Industrial Disputes Act, 1947, thereof is extended by subsequent Sections 1 and 5 of the Banking Companies Act, 1949, inasmuch as under the latter Act the Dominion Legislature got powers to make laws for the acceding States but that was different from saying that this Tribunal got jurisdiction to make awards binding on Banking Companies or their employees in such States. On the other hand Shri N. S. Rau, the learned Counsel for the applicant, relied upon the Adaptation of Laws Order, dated 26th January 1950 and urged that although some Acts of the Central legislature (as for example Indian Trade Unions Act, 1926 for the specific exclusion of Part B States) were excluded yet there was no such exclusion in regard to the Industrial Disputes Act, 1947 in the said adaptation of Laws Order and it was permissible to infer from this that by virtue of the adaptation of Laws Order, dated 26th January 1950 in pursuance of Article 372 of Constitution, the Industrial Disputes Act became operative over Schedule B States also with effect from 26th January 1950. The argument was stressed that as this Tribunal was constituted in February 1950 i.e. after that date it follows that the Tribunal has jurisdiction to adjudicate upon the disputes emanating from Part B States. The learned Counsel reinforcing the argument maintained that the Industrial Disputes Act of 1947 was not static and it was subject to all the amendments that were being made and as such it was to be read along with the Adaptation of Laws Order of 26th January 1950.

After hearing the arguments on the preliminary objection it was deemed advisable to hear the parties on merits also in order to make the award self-contained for the purpose of complete adjudication and Mr. Jeffares, Counsel for the Bank, was called upon to argue on facts as well. He, however, pleaded his inability and asked for some time to examine some of his witnesses and the case was again adjourned, and heard on 10th February 1951.

On merits Shri N. S. Rau, the learned Counsel for the applicant, while stating his case relied mainly upon the allegations already made in the application and produced some documentary evidence (Exhibited A, B, C, D, E and F) in support of the averments and argued that the applicant was an old employee and had put in 7½ years service in the course of which he received his annual increments regularly, which was well indicative of his satisfactory work and efficiency. Replying to the alleged charge of non-posting of a voucher Shri Rao argued that the Cash Credit Voucher for Rs. 550 relating to Bata Shoe Company was received at the close of the day when all other vouchers had already been posted and as such the non-posting was not due to any negligence on the part of the applicant. It was further argued that a large number of vouchers were also found lying on the Transfer Clerk's table on that very day which clearly indicates that vouchers received late were not necessarily to be posted on the same day. It was next urged that the applicant was given a warning on the following day as borne out by Exhibit C; and the matter had, so to say, been set at rest but a few days after he was again called upon to file his resignation on the plea that his work was found unsatisfactory and ultimately his services were terminated on the 13th August 1949 by a communication (Ex. F) addressed to him. It was argued that the applicant was neither charge-sheeted nor any proper enquiry was made into the charge, and furthermore the express permission of the Tribunal under Section 33 was also not obtained. The learned Counsel concluded that the procedure adopted was wholly unwarranted by law and as such the discharge order was untenable. Lastly it was submitted that the non-posting of the voucher relating to Bata Shoe Company again did not result into any loss to the Bank as the same was posted soon after and as such the Bank was not justified to invoke the extreme penalty of dismissal in this case.

The Bank representative in rebuttal examined (1) Shri S. R. Mundkur, Agent, Imperial Bank of India, Bezwara, (2) Shri S. Annaswamy, Agent, Imperial Bank

of India, Bangalore City and Shri V. Ramchandra Rao, Staff Assistant, Madras. This oral evidence mainly relates to the conduct of Shri Bhimsena Rao and the witnesses deposed that he was in the habit of criticising the supervising staff and when he was asked to desist from behaving in this manner he was generally recalcitrant. Shri Mundkur B.W.1 further deposed that the applicant was in the habit of procrastination and always delivered his work late and when he was asked to send his work he was insolent and on several occasions stated that it was the duty of the Peon. Shri Annaswamy B.W.2 explained the procedure with regard to the posting of vouchers and deposed that it was essential that the entries should be posted by Monday and that during the short period of his tenure of office at Bangalore he found that Shri Bhimsena Rao was always noisy and used to shout at the top of his voice and whenever he was called upon to explain, his attitude was one of a dictator. This witness while deposing in connection with the voucher of Bata Shoe Company, further stated that when he called upon Shri Bhimsena Rao as to why he had not posted the voucher, he replied that it was not his duty to go and search for the vouchers and that his duty only was confined to the posting of those vouchers which were brought over to him. On some discussion with him on the futility of his argument, the witness sent for the Accountant and told him to make Shri Bhimsena Rao to understand that he was adopting a recalcitrant attitude and that was not proper on his part but Shri Bhimsena Rao became more insolent and asked him to give in writing, if he had to pass an order. He was accordingly given a Memo. (Ex. W-3) and on the receipt of his reply (Ex. W-4) the papers were forwarded to the Head Office and on the instructions of the Head Office he was called upon to submit his resignation. Shri Bhimsena Rao, however, verbally stated that he was not resigning and the matter was again referred to the Head Office and the instructions were received to terminate his services to which effect was given on 13th August 1949. The witness further deposed that Shri Bhimsena Rao was asked to receive payment of salary for the current month and one month's salary in lieu of notice as well as one month and nine days salary for accumulated leave but he refused to accept the payment.

Shri Jeffares on the strength of this oral evidence as well as the documentary evidence referred to in the depositions of Bank witnesses argued that the Bank did not find it necessary to hold any formal enquiry or to give any regular charge sheet to Shri Bhimsena Rao; and terminated his services on account of his undesirable behaviour and general complaints against him for having made false claims for over-time as well as on the score of insubordination. The learned Counsel next argued that the case relates to service contract which could be terminated on requisite notice without assigning any reasons and in these circumstances the express permission of the Tribunal was not necessary.

The first authority put relates to Alexandra Jute Mills Vs their workmen published in L.L.J. (December 1950), and under the heading "Unfair Labour Practice" it was held that an order made in bad faith with an ulterior motive arbitrarily or with harshness, is an instance of unfair labour practice. This dictum has been discussed at page 1265 and it was observed that when an employee has been found to have wrongfully discharged by way of victimization or as an unfair labour practice the Tribunals interfered with the employer's decision and directed reinstatement. It has also been observed in this case that it has become a convention with the industrial tribunals to intervene and to direct reinstatement whenever a dismissal of a workman is found to have been prompted, though not openly, by victimisation or unfair labour practice. Similarly, in the other authority relied upon viz., Labour Law Journal—January 1951—Page 47. (J. K. Eastern Industries Ltd., Vs. their employees), the learned adjudicator while defining 'unfair labour practice' pointed out that to establish unfair labour practice it must be shown that the employee concerned was victimised for trade union activities or that the employer terminated the employment in bad faith, with an ulterior motive or committed an encroachment on any natural, contractual, statutory or legal rights of the employee. At page 48 to which reference was made, discussion was made in regard to this principle and it was observed that presumption as to such unfair labour practices may fairly be drawn where an employee has been found to have been discharged for no reason whatever or for a reason which is patently false or is proved to have been false, the true reason being an indirect or ulterior motive; and on the presumption remaining unrebutted on the part of the employer, the Tribunal may well consider whether in fairness and with a view to maintain better industrial relations, in the interest not merely of the employee concerned, but also of the community as a whole, the employee can be reinstated. The next authority cited on behalf of the Bank was a case between 'Rampuria Cotton Mills Ltd., Serampore and their Workmen'

(Labour Law Journal—September 1950). In this case the learned adjudicator differing from the view expressed by the All India Industrial Tribunal (Bank Disputes) reported at page 556 of the Journal, held that an industrial tribunal has power to interfere only in cases involving trade unionism as also where there has been an encroachment of any natural, contractual, statutory or legal rights of an employee. The learned adjudicator in this case at page 971 (L.L.J.—September 1950) to which a reference was made by Shri Jeffares also quoted Statute Law of the U.S.A. and observed that when an employee was punished or discriminated for his union activities, there is an interference with his 'just rights recognised by the Statute; and comparing it with the fundamental rights recognised under the Constitution of India it was observed that the Tribunals should interfere in those cases where there has been any infringement or encroachment of the natural or common law rights or rights created by Statute, agreement or conditions of service. Shri Jeffares argued at some length while referring me to these authorities but did not make out any point as to how these authorities were helpful in this particular case in which no plea of trade unionism has been raised but it was only contended that the discharge of Shri Bhimsena Rao from service was one of unjustifiable and wrongful dismissal and was not warranted by facts and circumstances of the case and was also bad in law for want of obtaining prior permission of the Tribunal. Mr. Jeffares in the course of arguments did not precisely press the contention that reinstatement can be allowed only in cases where bad labour practice on the part of the employer was established. But from the legal precedents relied upon by him it appears that he meant to contend that reinstatement could only be allowed in the cases of discharge or dismissal consequential upon victimisation or the exercise of bad labour practice. This proposition has been fully discussed in a Federal Court judgement 'Western India Automobile Association Dispute' L.L.J. 245 and it was held that in regard to reinstatement of dismissed employees in an industrial dispute under the Industrial Disputes Act, the words "in connection with employment or non-employment are of the widest amplitude and have been put in juxtaposition to make the definition thoroughly comprehensive. Their lordships further observed that any dispute connected with employment or non-employment should ordinarily cover all matters that require settlement between workmen and employers and laid down in unmistakable terms that it will be within the jurisdiction of the Tribunal to examine whether the termination of service was justifiable. This decision consequently establishes that the Industrial Tribunals are empowered to order reinstatement of dismissed and discharged persons and the relief is not confined to cases of victimisation on account of the exercise of bad labour practice as argued by Shri Jeffares. My view rather is that this right is implicit in the Act itself and the whole mechanism of the Act and its scope entitles the Tribunal as a matter of law to adjudicate upon the merits of the cases of reinstatement to ascertain as to whether the discharge or dismissal order was justifiable irrespective of the exercise of bad labour practice. The definition of victimisation moreover is of wide import and all such cases, in which dismissal was caused in bad faith or was influenced by ulterior motive or vindictiveness, fall in the category of victimisation. The plea raised by Shri Jeffares, therefore, is devoid of any substance and does not hold water.

The other argument advanced by Shri Jeffares is to the effect that the termination of the services of Shri Bhimsena Rao was in point of fact the termination of a contract of service and that no formal charge or enquiry was at all necessary. The learned Counsel went to the length of arguing that the Bank could not wait long to tolerate the man and discharged him from service and that the procedure adopted was justified in common law. He, however, at the same time admitted that under labour legislation some restrictions have been placed on the termination of the services but did not further enlighten me as to how the Bank had complied with those restrictions. No letter of appointment or any agreement if at all it was executed between the parties was produced and in the absence of any contractual relationship based on a specific agreement of service the employee shall have to be considered to have entered the Bank's service as a permanent hand and his services could only be dispensed with subject to the provisions of Industrial Disputes Act. Now no permission under Section 33 was admittedly applied for to dismiss the employee nor any proper enquiry was held. In these circumstances the learned Counsel for the Bank has taken recourse to common law and it is to be seen as to how it supports the plea advanced by the Bank. Shri Jeffares did not cite any authority in this respect while Shri N. S. Rau on behalf of the applicant after explaining the position with regard to the non-posting of voucher of Bata Shoe Co. and the conduct of the applicant in the course of his service relied upon 1945 Nagpur 244 A.I.R. and 1940 P.C.101 A.I.R. Both these authorities relate to common law and deal with the relationship of Master and Servant.

In the one more authoritative of the two viz. 1940 P.C. 101 A.I.R. it was held that habitual negligence of serious character would only justify the dismissal of an employee but summary dismissal is a drastic step and if it is to be excused, the acts of neglects of the servant of which complaint is made, must be of serious nature and as such to show that he is not carrying out his part of the bargain in the matter going to the root of the contract. Their lordships further observed at page 104 that all that a servant has to do is to bring reasonable skill and diligence to bear on his work. Negligence or incompetence on his part cannot be proved merely by comparing his work with that of his predecessor. On the point of onus their Lordships were also of the opinion that in an action by the servant for wrongful dismissal the onus is on the master to explain servant's failure.

The other case reported in 1945 Nagpur 244 A.I.R. related to the suspension of the servant by the master and the question arose as to whether the servant was entitled to the wages for the period of suspension. The facts of this case stand on different footing out the principle in regard to the relationship of Master and servant was also discussed in this case and it was held that an employer may in certain cases dismiss a servant under common law but if he does not dismiss him but suspends him he is bound to pay his salary during the period of suspension.

Reference was also made to Section 33 and it was maintained that even under the old Act where exception was made in the case of misconduct the charge was to be proved by setting up an enquiry committee and by affording an opportunity to the employee for explaining his position and in the absence of any such procedure having been adopted the discharge of Shri Bhimsena Rao was not tenable.

There is yet another aspect of the question to be considered viz. that although the Bank did not deem it necessary to set up a committee of enquiry yet, it has examined some of the witnesses in this court in support of the charge of insubordination and indiscipline and the question arises as to whether this evidence adduced before this Tribunal by itself should amount to enquiry and in view of the fact that Shri Bhimsena Rao did not come into the witness box the charge of insubordination was not proved against him. The learned Counsel for the applicant in this respect on questioning only stated that the Civil Procedure was not being applied in these proceedings and as such he did not deem it necessary to bring his client into the witness box but the evidence was before the Court and the question of onus had become immaterial.

The examination of the whole evidence and the attending circumstances, make me to think that Shri Bhimsena Rao's general behaviour cannot be said to be one as desired but the question is as to whether his attitude of arguing with officers in support of his cause was sufficient to dismiss him from service and the necessity of asking the prior permission of the Tribunal could be dispensed with. Under the old Act of 1947 no such permission was required in cases of misconduct but I have not come across with any award wherein it has been held that the services of an old employee could be terminated summarily without giving him a charge sheet for misconduct. Shri Jeffares frankly admitted that no charge sheet was given and as deposed by one or two Agents of the Bank under whom the applicant worked, the management took the view that the services of the applicant could be dispensed with if he was only found undesirable. To my mind it would be laying down a perilous proposition if this is allowed; as it would leave the matter wholly at the caprice of any one of the officers and the security of service will be very much endangered more especially in the case of old employees. On merits, therefore, in consideration of all the facts and circumstances I feel inclined to hold that no case for dismissal was made out even assuming that Shri Bhimsena Rao was not so submissive as he ought to have been towards his superiors and no case of gross-misconduct as to attract the penalty of dismissal was established against him.

On the legal objection, however, the case stands on different footing and as held by me in the Delhi State Bank Disputes award in the cases of Shri S. S. Tripathy and others; I still find myself in respectful agreement with the observations of the All India Industrial Tribunal (Bank Disputes), Bombay viz. that this Tribunal has no jurisdiction over Part 'B' States under the old Act of 1947 which has since been amended in May 1950 and the jurisdiction of the Tribunal has been extended to Part B States.

It cannot be gainsaid that the jurisdiction of the Tribunal flows from the Industrial Disputes Act of 1947 and not from the provisions of the Banking Companies Act of 1949 and as such whatever anomalous propositions may arise out

of the conflicting provisions of the Industrial Disputes Act, which is responsible for the setting up of the Tribunal and the Banking Companies Act, of 1949, whose provisions extend to all the provinces of India as defined under Section 46 of the Government of India Act, of 1935 as well as the acceding States of Part 'B' to the extent to which the Dominion Legislature has power to make laws for the States as respects Banking; this Tribunal cannot usurp any power not vested in it under the enactment of 1947. The amended Act, of course extends the jurisdiction to all the States excepting Jammu and Kashmir but it came in force in May 1950 and all causes arising after that date will be cognizable by the Tribunal under the stress of amended Act but the cases in which cause of action arose earlier could only fall in the ambit if retrospective effect of the Act could be given to the amended Act. Shri Rao frankly conceded that retrospective effect could not be given as the same was not specified in the Act itself. Judged on this principle the other argument *viz.* that the Industrial Disputes Act was not static and was modified by the adaptation of laws order passed by the President under Section 372 of the Constitution of India also falls to the ground in as much as that order does not specify the giving of effect to those laws retrospectively. The aforesaid order rather is silent about the Industrial Disputes Act of 1947 and it would be doing violence to the order to interpret it in the sense that it embraces those Acts for adoption which are not included much less than the applicability of those be allowed to take effect retrospectively. I am, therefore, unable to accept the argument of Shri Rao advanced on behalf of the applicant with the result that the claim must fail on the legal objection and the same is disallowed.

Reference No. 2 of 1950

CENTRAL BANK OF INDIA LTD.

APPEARANCES :

Shri T. Achyutaramlah in person.

Shri B. Shankar Rao, Counsel, along with Shri K. Vankateswara, for the Bank.

T. Achyutaramlah: He joined the Bank's service on the 15th November 1943 at Vijayavada Branch as Steno-typist and continued to work as such till June 1946. He was subsequently transferred to Cocanada Sub-Branch as Head Clerk and was afterwards made Junior Assistant in the year 1947. It was on the 14th December 1949 that he was served with a Memo. emanating from the office of the Sub Agent calling upon him to explain certain points given therein. He submitted his explanation (Ex.A) filed with the complaint. In the same month a week after he was again called upon to explain and this was not all. The management issued another Memo. on 20th February 1950 and called upon him to explain on the same day as evidenced from his explanation (Ex.B) filed with the complaint. He, however, did not receive any reply from the Bank's side and on the 14th March 1950 he was served with a Memo. to the effect that he was suspended till further orders. No reasons, however, were mentioned in that Memo. except that the suspension was made under the instructions from the Madras Office. Thereupon he made a representation to the Assistant Inspector of Labour, 2nd Circle, Vijayavada, under the Madras Shops and Establishment Act 1947 to arrange for the payment of wages which were withheld by the Bank and he got the salary. It was on the 15th May 1950 that he was charge-sheeted on the basis of certain alleged mistakes done by him during the course of two years and his explanation was called for. The applicant, however, was not able to submit his explanation soon after and demanded perusal of the explanation given by the other members of the staff in that connection but ultimately submitted his explanation on the 19th June 1950. The management, however, was not able to arrive at any decision and he continued to remain under suspension for a pretty long time. On the 19th July 1950 he made a representation to the Head Office at Bombay to consider his case. No reply was however forthcoming and ultimately his services were terminated by order, dated 12th December 1950. It was also stressed that the order of discharge was bad in law as the termination of his services took place during the course of the proceedings of the Tribunal without obtaining any prior permission of the Tribunal as required under Section 33 of the Act.

Replying to the alleged charge of forgery it was submitted that the matter has been reported to the Police not only against him but also against some other employees and it was emphasised that action against him was improper as the matter was yet to be gone into by the competent authority. It was next urged that reduction in his emoluments in the course of suspension was also not justified. The relief sought was that the Bank be ordered to pay him all his dues for the period of suspension and the order of dismissal be set aside. In regard to the-

objection raised by the Bank in the written statement that the applicant was an officer and did not fall within the ambit of the definition of workman under 2(s) of the Act it was submitted that his very designation was Junior Assistant and as such he could not be dignified as an officer.

Shri Shankar Rao, the learned Counsel for the Bank, in reply while dilating upon the preliminary objection submitted that there was no such grade as junior officer in Banks as urged by the applicant and in point of fact there are only two classes of employees *viz.*, Bank's officers and clerical staff and menials and the applicant falls in the category of officers. It was further argued that the applicant had powers to pass cheques, orders for payment upto Rs. 3,000 on his own authority without making any reference to the Officer-in-Charge. He was also holding power of attorney, signing bills, advices and other various duties of controlling and directional nature. Reliance was placed on the Delhi State Bank Disputes award (published in the *Gazette of India*, 30th December 1950—page 1123—para. 18) and it was further argued that the applicant by his own admission made in the claim at page 3 line 9 from the bottom, has described himself as an alternate to the Officer-in-Charge for passing cheques for payment and was an officer.

This objection may well be disposed of at the very outset because I have already held in the Delhi State Bank Disputes award that the Assistants by the very nature of work cannot be dignified as officers. On the appreciation of the arguments advanced by both sides furthermore it seems clear to me that according to the grades the Junior Assistant also was not an officer as he was drawing much less salary than Rs. 500 and his position was not of an alternate to the Officer-in-charge referred to at page 3 of his statement of claim but he was to all intents and purposes a Junior Assistant.

The other objection raised was to the effect that the Tribunal was constituted by Notification No. LR.2(273), dated 21st February 1950 and therefore it has no jurisdiction to hear cases in which cause of action arose after 21st February 1950. In support of the contention reference was made to the observations made by the All India Industrial Tribunal (Bank Disputes) at page 220 of the award in Appendix IX—paragraph 8 in the case of Shri P. N. Thulasingham. The argument precisely was that the Government cannot be deemed to have referred a dispute which arose or was apprehended to arise after 21st February 1950; and that this case cannot be gone into as the order of dismissal was made after 21st February 1950. Shri Shankar Rao further contended that the Reference was made under Section 10 of the Act and the wording of clause (2) shows that the Government can and could refer the disputes only in the interests of the employees in general and not for any one individual. Emphasis was laid on the words "the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly" and it was urged that in the light of that this Tribunal was not intended for the ventilation of private grievances of the employees as it is in this case. Stress was furthermore laid upon sub-clause (2) to the words "where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court of Tribunal" and it was maintained that it was for the Government to entertain such applications and make the reference and the applicant has no right to apply directly to the Tribunal. Reference was also made to Chapter II under the heading 'Certain questions regarding jurisdiction' at page 3 of the All India Industrial Tribunal (Bank Disputes) award and it was contended that the discussion made there will show that the individual grievances by any workman cannot be agitated before this Industrial Tribunal unless any Union has taken up the cause and has adopted the grievance of the individual as an Industrial Dispute between the employer and the workmen. The learned Counsel concluded that the case of the applicant has not been represented by any Union nor by the Government and as such it cannot be entertained.

The first objection appears to be palpably fallacious inasmuch as if no claim could be made after 27th February 1950, the reference becomes a dead letter. The hard fact is and all cases arising after 13th June 1949 or apprehended to arise are included under the Reference and can be taken cognizance of by this Tribunal. The wording used in the Reference and the Schedule attached thereto are much too clear and I have no hesitation in holding that the jurisdiction of the Tribunal is not barred in this respect.

The other objection born of more ingenuity is equally devoid of merit and the argument appears to be over stretched under the dictates of Sub-Clause 2 of Section 10 of the Act. In the first place the reference was made under Section 10(1) and not under 10(2) of the Act and the points of dispute were fully mentioned in the schedule and it was futile to urge that the reference was not made on behalf of the

workers. The latter part of the contention that the reference was not made for individual grievances seemingly seeks to imply that all claims should emanate from unions and no individual could seek remedy by filing his claim. The question resolves itself by referring to the notification itself the operative part of which reads as follows —

“AND WHEREAS a further industrial dispute has arisen after the 13th June 1949 or is apprehended between the banking companies mentioned in Schedule I annexed hereto and their employees in respect of matters specified in Schedule II hereto annexed,

AND WHEREAS the Central Government considers it desirable to refer the further dispute for adjudication,

Now, therefore in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act 1947 (XIV of 1947) the Central Government is pleased to refer the said dispute for adjudication to the Industrial Tribunal at Calcutta constituted under section 7 of the said Act

SCHEDULE II

- 1 Retrenchment discharge or dismissal of workmen after the 13th June 1949 (specific cases to be cited by employees)
- 2 Stoppage of increments and withholding of promotions specific cases to be cited by employees)

Reference was also made to the Award of All India Industrial Tribunal and the observations made by their lordships relating to the jurisdiction of the Tribunals under the Act

Now under the heading ‘certain questions regarding jurisdiction’ in Chapter III of the All India Industrial Tribunal Award to which reference was made by Shri Shankar Rao Deo scribe it to say that this point was not at all raised by the Banks much less discussed. Only three questions cropped up and were answered. These may be shortly stated as under in an abridged form —

- (1) That in certain Banks there is no existing Dispute between the Employers and the Employees and in such cases the Tribunal has no jurisdiction
- (2) As to whether in the Industrial Disputes which are said to be apprehended there was material before the Tribunal to justify such apprehension and if as actually crystallised into Industrial Dispute
- 3) That the notification dated 12th August 1949 amending the order dated 13th June 1949 by which reference was made or apprehended is bad in law and of no effect. Obviously, no question as now posed by the Counsel that individual cases to be referred to the Tribunal was raised and the arguments based on this score appears to be extravagant

The contention is therefore without merit and needs no serious consideration for the simple reason that if individual claims are not entertainable then those who are not on the rolls of Employees Union would go without remedy and the Act no where enjoins upon all and sundry to join a Union. This disposes of the preliminary objections.

On merits the Bank's case was that the employee was called upon to explain in regard to the withdrawal of Rs 1000 and 3500 respectively which formed the subject of withdrawal slips of two constituents and complaints were received that the money was withdrawn without their knowledge on forged cheques. As the applicant did not give any satisfactory reply in his explanation he was suspended from service. Shri Shankar Rao while referring to the explanation (Ex A) dated 16th December 1949 laid great stress on the words ‘that the withdrawal was passed by him in the usual course in the discharge of his duty’ and concluded that the passing authority as the applicant was grossly neglected in passing the signature which had glaring features of variety and could have easily attracted his attention. In regard to the other withdrawal slip of Rs 3500 it was argued that the same was not countersigned by the Officer-in-charge for payment and in this case also the applicant's explanation was not satisfactory. It was emphasised that the applicant could not take shelter under the misdescription on the withdrawal form and in view of his own admission in his explanation (Ex B) ‘that he did not compare the specimen signature with the signature on the specimen signature form’ it followed that he was negligent in the discharge of his duty and the Bank was put to loss. The learned Counsel referring to this withdrawal form argued at considerable length and tried to convince me by pointing out various defects in the writing and several other features of the mode of writing whereby he claimed that the documents were fictitious which were passed by the applicant without taking good care. The learned

Counsel at the same time stated that the matter had already been reported to the police and was under investigation and the withdrawal slips and other relative papers were required by the police and could not be brought on this record. In these circumstances when the case admittedly is in the hands of Police for investigation and as stated by the Bank's side was likely to come up in Court for regular trial. I do not think it was at all necessary for me to go into all these features of the alleged forged document and sit on judgment on a *sub-judice* case. The only point for my determination at present is as to whether after suspending the applicant from service and sending the case to police for regular trial the Bank authority was justified in terminating his services before awaiting the verdict of the Trial Court against him. In this respect as observed above the learned Counsel raised one or two legal objections regarding jurisdiction which have already been disposed of and the only question to be answered is as to whether the dismissal order was justified without having obtained the prior permission of the Tribunal. In this respect it seems clear to me that in case the Bank had not sent the case to police and had set up their Committee for departmental enquiry and had come to the conclusion that the applicant was found guilty for misconduct it would have been a different matter and the verdict of the enquiry committee may well have been considered on its face value as under the old Act of 1947 no permission was necessary. But in view of the fact that the case was not enquired at all and the matter was reported to Police and meanwhile the Bank authority chose to dismiss the applicant from service without obtaining the permission of the Tribunal appears to me not warranted by law. If this procedure be allowed then the provision of Section 33 would become negatory and the employer will be entitled to dismiss any one of the employees without holding enquiry into the matter and set the salutary provisions of Section 33 of the Act at naught. In these circumstances there is no alternative for me but to hold that the order of dismissal was untenable for want of permission and the same must be set aside. But so far the suspension order is concerned it has been held in more than one awards that the same does not amount to any change in the conditions of service and furthermore when a certain charge has already been levelled against the applicant and he has been arraigned under the Criminal Procedure Code for having committed offence under Penal Code as principal or abettor, the Bank was justified in suspending him from service and the applicant shall have to remain under suspension till the final decision in the case is arrived at in Court of Law. It will be then and then alone that the Bank shall have to consider in the light of the verdict given for or against the applicant as to whether he could still continue in service or not under the provisions of law by obtaining the permission of the Tribunal or without permission.

The next and the last point for consideration relates to the question of emoluments of the employee during the period of suspension. Their lordships of the All India Industrial Tribunal (Bank Disputes), Bombay, have laid down certain directions in this connection at page 140 of the award and its operative portion runs as under—

'We direct that an employee shall be entitled during the period of his suspension to a subsistence allowance at such rates as the suspending authority may direct but not less than one third of the pay and the allowances which he would but for the suspension, have drawn.' This dictum clinches the issue and I would therefore further hold that the applicant is entitled to receive one-third of his salary and allowances for the period of suspension and direct the Bank to make payment of the arrears due to him at the aforesaid rate from the date of suspension to the date of the operation of award and continue to pay him till the final decision regarding his ultimate dismissal or reinstatement from or in service be made.

Reference No. 6 of 1950

CHARTERED BANK OF INDIA, AUSTRALIA AND CHINA

An application was filed dated 14th March 1950 by the Joint Secretaries of the Chartered Bank Indian Staff Association, Madras, relating to the discharge of three Peons, namely (a) R. Chidambaram, (b) M. Varadarajan, (c) J. A. Eruthayanathan and regarding the stoppage of increments and withholding promotions etc. By another application dated 6th April 1950 (received in the office of the Tribunal on the 10th April 1950), the said Joint Secretaries requested that the entire communication be considered as cancelled on which my predecessor passed the following Diary Order on the 5th June 1950:

"5.6.50 S. K. Mullick for the Bank.

No appearance for the Employees."

There are no complaints against the Chartered Bank with the exception of the complaint made in the letter of the Chartered Bank of India, Indian Staff Association,

Madras, dated 14th March in respect of the three Peons said to have been discharged after 13th June 1949. That has also been withdrawn by letter, dated 6th April 1950. The claims are therefore dismissed as withdrawn. Nothing further to be done.

(Sd) F. JEEJEBHOY, Chairman.

The above order shall form the part of this award accordingly.

Reference No. 8 of 1950

EASTERN BANK LTD.

APPEARANCES: Shri P. N. Thulasisingam in person.

Shri B. S. Parthasarathy, Counsel, for Shri P. N. Thulasisingam.

Shri A. S. Jeffares of Messrs. King and Patridge, Solicitors, for the Eastern Bank.

P. N. Thulasisingam.—The applicant joined the service of the Bank on the 17th November 1931 as an attender on Rs. 10 and was subsequently promoted to the post of a Bill Collector on a salary of Rs. 91 per mensem. It was alleged that he worked to the satisfaction of his superiors and his service was unblemished but it so transpired that on the 25th August 1949 he was asked to continue to work late in the evening and he pleaded his inability to continue to work whereupon he was reported to the Manager for insubordination and was immediately relieved of his duty. It was contended that his discharge from service in this perfunctory manner was not warranted by law. No formal charge sheet was given to him nor any opportunity to explain and as such the order of discharge was untenable. Replying to the contention raised by the other side in the written statement *viz* that the matter was taken to Labour Court and decided and as such cannot be re-tried it was contended on behalf of the applicant that the Labour Court did not give any finding and it was not a bar to the hearing of the case by this Tribunal. In regard to the other part of the contention *viz* that on the suggestion of the Labour Commissioner the applicant was re-employed as new entrant and the dispute in regard to the termination of service no longer existed, Shri Parthasarathy referred to paragraph 6 of his rejoinder dated 29th May 1950 and furthermore relied upon the following documents:

- (1) Letter dated 9th January 1950 addressed to the Manager by Shri Thulasisingam (Ex.A).
- (2) Letter dated 19th January 1950 again addressed to the Manager by Shri Thulasisingam (Ex.B).
- (3) Another letter purporting to have been signed by the Manager dated 26th August 1949 (Ex.C)
- (4) Another document dated 31st January 1950, (a pencil note) alleged to have been written was also produced in evidence (Ex.D).
- (5) The other document relied upon was a Memo. dated 20th January 1950 sent on behalf of the Labour Commissioner to the subject, placed on the record (Ex.E).
- (6) Letter dated 1st February 1950 was produced (Ex.F)
- (7) Copy of order dated 20th February 1950 passed by the Commissioner of Labour (Ex.G).

The learned Counsel on behalf of the applicant on the strength of the documentary evidence described above argued that the job offered to him on the suggestion of the Commissioner of Labour was not a new job, and claimed the arrears of salary for the intervening period as well as yearly bonus for the year 1949 and the repayment of the Provident Fund deduction in all Rs. 802/3/- as detailed in the last paragraph of the statement of claim.

In reply, the Bank representative raised the preliminary objection that the applicant had already chosen a forum for the redress of his grievances by filing an appeal to the Labour Commissioner under Section 41 of the Madras Shops and Establishment Act and that the matter was duly considered and decided as per order dated 20th February 1950 (Ex.1). It was maintained that in the light of the decision arrived at, the claim was not entertainable by this Tribunal. On facts it was stated that it was on the suggestion of the Labour Commissioner that Shri Thulasisingam was taken back in the service under certain terms given therein (Ex.2). One of the terms was that he was re-admitted in service on a lower salary and he agreed to that. It was averred that there was no question of coercion or duress and the arrangement was made by the free will of the

applicant on the suggestion of the Labour Commissioner. It was also emphasised that the Bank rather than the applicant was the party whose appeal was dismissed by the Labour Commissioner. It was stated that the applicant was not entitled to any arrears as claimed by him. Finally it was held that the decision of the Appellate Authority under Section 41 of the Shops and Establishments Act Madras was final and was binding upon the employer and the employees and it was not open to the Tribunal to sit on judgment on the same.

Now the order passed by the Labour Commissioner as evidenced from Ex 1 reads as follows

Ex 1 Sub **Madras Shops and Establishments Act, 1947**—dismissal of Shri P N Thulasingham Mudaliar from "The Eastern Bank Ltd" Madras—Case No 320/49—Orders—issue of—

Ref Appeal dated 11th October 1949 from P N Thulasingham Mudaliar

Orders were passed in the above case on 15th February 1950 dismissing the appeal petition

(Sd) K SRINIVASAN,
for Commissioner of Labour

To

Shri P N Thulasingham Mudaliar
23/24 Avadi Srinivasai Street Choolai
Vepey Post Madras

Copy to The Manager The Eastern Bank Ltd

C/o Messrs King and Partridge High Court House Madras

Another document filed by the applicant (Ex B) paragraph 3 in evidence further clinches the matter wherein he has stated as follows

Ex B *

"I am fully prepared to accept a job in the Bank on a basic salary of Rs 85 per month (as against the basic salary of Rs 91 per month which I received up to the time of my dismissal) and I am well aware that my future in the Bank will entirely depend on my conduct and work in my new job and that should there be any further cause of complaint through insubordination or lack of attention to duties on my part I will be liable to summary dismissal. I shall be very grateful if you will give me a new job on these terms and I understand that I will first have to withdraw my application before the Commissioner of Labour."

In the light of this admission made by the applicant in his own letter dated 9th January 1950 (Ex B) coupled with the order passed on an appeal referred to above (Ex A) there is hardly anything for me to determine and the claim of the applicant which appears to be rather frivolous must fail. The same is disallowed.

Reference No 19 of 1950

INDIAN BANK LTD

APPLAINTANCES Shri V N Vellaiyan Vice President along with Shri S Subramanian Secretary Indian Bank Employees Union Madras, for Shri O AL Chidambaram

Shri P L Karappat Advocate for the Bank

(1) **M Subba Rao**—Shri Subba Rao has stated in his application that he has been working as a clerk since 1917 and the Bank has not increased his salary under the rules notwithstanding the repeated demands. He claimed the difference of Rs 27 in his pay with retrospective effect from 1916. He however did not turn up and the case was held abeyant after the provisions of Rule 19 of the Industrial Disputes (Central) Rules. The Bank representative raised the preliminary objection that the cause of action as disclosed in the application arose much earlier than 10th July 1947 and the case did not fall within the ambit of this Reference and was not liable to be referred. On merits it was submitted that only summary was made in 1916 and the effect of the Industrial Disputes Act was not applied since then. The case was referred to the

allowed. The preliminary objection manifestly prevails as the cause of action arose somewhere in 1946 and I am not competent to entertain any claim in which cause of action arose earlier than 1st June 1949 under the dictates of the Reference. The application is accordingly dismissed.

(2) **V. Kameswara Rao**—This case has been withdrawn by his letter dated 2nd February 1950 and is filed having been withdrawn.

(3) **J. P. Sastry**.—This case was heard *in absentia* under the provisions of Rule 19 of the Industrial Disputes (Central) Rules as the applicant did not make his appearance.

On the perusal of the record it was found that the Bank had already re-transferred him to the area of his Union. He wanted transfer at the place of his activities but the Bank did not see then way to send him exactly at the place where he was working in the first instance. A communication was received from him after the hearing of the case that he wanted to go to the very place from where he was removed by his first transfer. He has however not come forward to explain his difficulty as to why in the course of the employment he should select the place of his own choice and should not allow the employer to meet the exigencies of the administration. I see no substance in the application and the same is disallowed.

(4) **O. AL. Chidambaram**.—His case is that he joined the Bank's service in 1941 as a Shroff and was subsequently promoted to the post of Sub-Agent. He worked at several branches and it was alleged that no complaint was ever made regarding his work until December 1949 when some charges were levelled against him and he was called upon to submit his explanation. The enquiry however terminated in his transfer to the Head Office where he was entrusted with the work of Internal Auditor. It was on the 10th June 1950 that the applicant received an order dated 10th June 1950 terminating his services whereupon he appealed to the Board of Directors but to no avail. Replying to the charges levelled against him by the Bank authority the applicant stated that the same were of trivial nature and the one which was much made of viz that he was borrowing money for his father's business was of no substance inasmuch as the fact was already known to the Bank and that the applicant as a member of the joint family was helping his father in his business which was permissible under the Bank's rule. It was also stressed that he was given credit facilities by the Bank and he availed those facilities keeping in view the interest of the Bank also. It was argued that the Bank did not suffer any loss by these transactions and it was wrong to say that the charge was of any serious nature. It was also urged in this connection that when exception was taken by the Bank in their letter dated 19th November 1948 no new transaction was made and the previous ones consequently could not form the subject of any charge against him. On the other hand the Bank representative controverted the argument of the other side and maintained that use of the Bank's money in private business amounted to gross misconduct and that the applicant who was at the head of the office as Sub-Agent had abused his powers by entering into transaction with the constituents of the Bank by borrowing money for his father's business and that the explanation given by him was not satisfactory. In this connection a letter of one of the constituents in Tamil (Ex 3) was also relied upon. The Bank representative referred to another charge mentioned in the Charge Sheet (Ex 1) to the effect that the applicant had advanced a sum of Rs 2150 to Messrs P. Periasamy Maniappar and Co on the 18th March 1949 against the alleged stocks of 1800 bags of paddy but it was subsequently found that the storage of paddy was made on the 21st March 1949 and as such the applicant had exceeded his powers to advance a sum of several thousands against the stocks which were not yet made available. The Bank representative furthermore referred yet to another charge viz that the applicant had submitted a false return in which a figure of Rs 4,00,000 was stated to be altered on 19th November 1949 in order to suppress the fact that an unauthorised draft had been allowed in the name of D. Rao Feroz. The Bank representative urged that in the case of this applicant all due procedure was gone into and all facilities were afforded to the subject to meet the charge and lead his evidence in defence and that the matter was fully considered by the Board of Directors and as such the Bank was justified in terminating his services. Another objection raised in the applicant's statement was that the applicant was an officer and did not satisfy the definition of workman was also pressed and it was argued that Shri Chidambaram was in-charge of a Sub-branch and had all the directional and controlling powers of an officer.

Shri Vellaian, on behalf of the subject, in reply repudiated the charges levelled against him and strenuously contended that small matters were being exaggerated and bolstered up in order to sack him. It was argued that the Bank was well aware with regard to the business of his father and as stated above had given him credit facilities and the same now could not form the subject of charges. In regard to the loan of Rs. 21,000 against 1,000 bags of paddy it was submitted that the goods referred to were under transshipment and that the loan was advanced on a letter of allotment by the Government Grain Purchasing Officer in all good faith to a constituent of reputable firm who were having credit facilities to the extent of lakhs of rupees from the Bank previously. In respect of the last one being a alleged alteration made in the weekly statement Shri Vellaian argued that the alterations were made by the subordinate staff by way of correction and the same were attested by him. It was further emphasised that the corrections were made in the return and not in the original books and as such the alteration did not amount to the charge of misconduct. Replying to the legal objection that the applicant was an officer and did not fall within the definition of workman the Union representative on behalf of the applicant argued that Dindigul Branch where the applicant worked as Sub Agent was in point of fact a sub-office under the control of the Branch Office Mathurai and as such the applicant was not enjoying the powers of the Sub Agent and all papers were to be submitted to the Branch Office for sanction.

Now so far the legal objection is concerned the applicant was admittedly working as Sub-Agent and in the absence of any evidence that Dindigul where he worked as Sub Agent was in point of fact a sub-office and was working under the instructions of the Branch Office Mathurai the applicant shall have to be taken as a Sub Agent and in the light of the decision already arrived at by me in a Delhi State Bank Disputes Appeal wherein a Sub Agent was held to be an officer the objection prevails and the claim fails on this short ground. On merits also in consideration of the facts and circumstances of the case it appears that the Bank went through the due procedure of enquiry and the subject was given all facilities to meet his case and lead evidence in defence and ultimately decision was arrived at by the Board of Directors. In the absence of any evidence of bad labour practice or that the verdict of the Directors was influenced by any ulterior motive against the applicant I do not see any good reason to substitute my judgment as against that of the Board of Directors. The charges described above may have been exaggerated but the hard fact remains that the applicant was borrowing money from the constituents of the Bank for his father's business and exception was taken by the Bank authority in that respect. The other charges may not be of any serious nature but this charge appears to be one of the abuse of powers and cannot be taken lightly as the applicant has sought to do. In the result the claim fails and the same is disallowed.

Reference No. 20 of 1950

PUNJAB NATIONAL BANK LTD.

APPEALERS: SHRI M. S. RAMCHANDRA RAO and PERSON

SHRI A. Nagesh Rao Advocate for SHRI M. S. Ramchandra Rao

SHRI B. S. Pulasthiyah Advocate for SHRI G. Mohanasubramaniam

SHRI U. Subramanian Advocate along with SHRI D. R. Sethi, Manager, for the Bank

(1) **M. S. Ramchandra Rao**—The applicant joined the Bank's service as a Junior Probationary Officer on the 17th March 1941. He was to be confirmed on the 17th September 1941 but it so happened that he was served with a Charge Sheet on the 25th August 1941, the effect of which was that his work was unsatisfactory and was called up to the management for which he had to give an explanation on the 12th September 1941 (Ex. A) was not accepted. The explanation given by him was over-ruled and he was discharged from service on 12th October 1941 (Ex. C).

It was urged on behalf of the applicant that there was no charge of misconduct against the applicant and one of inefficiency was baseless much less proved. It was further argued that the mistakes alleged to have been done were of minor nature and are likely to be done in day to day work. The argument was further stressed that subsequently the management also charged him with misconduct on the basis of certain observations made by him in his explanation (Ex. A) during the course of enquiry but the same did not amount to misconduct inasmuch as it was the subject's right to refute the alleged charge. Finally it was urged that the applicant had already left the service with the United Commercial Bank where he had been working before joining this Bank and thus had suffered lot;

that his discharge from service was not warranted by facts and the same was motivated on account of the closure of certain branches and the management asked to retransfer his services

Shri Subramanian on behalf of the Bank raised the preliminary objection that the Tribunal had no jurisdiction to try this case inasmuch as that the jurisdiction of this Tribunal does not extend to the States under the provisions of the Industrial Disputes Act 1947 and the amended Act of 1950 did not apply as the cause of action arose prior to May 1950. Reliance was placed on the case of *Imperial Bank of India v. State Bank of India* (1950) 1 S.W. 2d 111 (S.C.) and it was also objected that the applicant was an officer and did not fall within the ambit of the definition of workman under Section 2(s) of the Act. It was further contended that the applicant was a probationary hand and until and unless he was confirmed he was not a regular employee in the legal sense and in his case the provisions of the Act could not be invoked, and it was not incumbent upon the management to give him any representation at all. The Bank however charge sheeted him on the basis of his unsatisfactory work but that by itself was no reason to construe that the discretion which vested in the management had been waived off or was not to be exercised. The Bank representative produced the original letter addressed by the applicant to the management (Ex 1) wherein he accepted the decision that he was no longer in the service of the Bank. The other argument advanced was that he had made certain allegations against the Bank authority which amounted to misconduct. Reference in particular was made to the penultimate para of his explanation dated 5th September 1949 and it was contended that they were of damaging nature and amounted to gross misconduct on the part of the applicant. Finally it was maintained that the applicant's service could be terminated merely on the basis of his misconduct apart from the charge which was levelled against him initially. On merits it was stated that the applicant in his explanation did not deny the mistakes that he had committed and as such the charge was well-established against him. A copy of the letter addressed to the District Manager by the Manager of the Local Branch dated 25th March 1950 was produced (Ex 2) containing some of the faults and mistakes committed by the applicant in the course of his service and it was contended that some of them are of serious nature involving loss to the Bank.

In reply the learned Counsel for the applicant submitted that the legal objection with regard to the jurisdiction was not tenable inasmuch as the laws adopted by the Adaptation of Laws Order under Article 372 of the Constitution Act (published in the Gazette of India—January 1950) excluded the Industrial Disputes Act, 1947 and as such the jurisdiction under the Act extended over all the States of India. The other argument advanced in this connection was that the Punjab National Bank is a centralised Bank having its Head Office in Delhi and having branches all over India and it was incorrect to say that the branches working in the Part B States are not governed by the Industrial Disputes Act when the branches are run by the centre. The argument was further stressed that the award of the All India Industrial Tribunal (Bank Disputes) has been applied not only in the provinces of former India but also to all the Part B States which have now acceded and as such the objection was devoid of any substance. Replyng to the contention that the applicant was an officer it was contended that the mere use of the word 'Officer' is not sufficient and the character of the work is to be determined and as the nature of his work was not directional he was not an officer. Reliance was placed in the case of *O. P. Parkash Kalia* decided by the All India Industrial Tribunal (Bank Disputes) Award No. 100 dated 19th March 1950 in the Gazette of India dated 20th March 1950.

As the legal objection raised goes to the root of the case I do not think it is necessary to go into the merits of the case. In the case of *Shri Bhimsena Prasad* (Imperial Bank of India) I am afraid this case shall also fail for want of jurisdiction. The new argument advanced in this case namely that the terms of the All India Industrial Tribunal (Bank Disputes) Award have also been applied in the states which have acceded also does not carry any weight. The terms of the All India Industrial Tribunal (Bank Disputes) Award have been applied by the Head Office in the case of employees of the Bank working in the Part B States, the same will be of voluntary extension and cannot vest jurisdiction upon the Tribunal which has to be made otherwise enforceable. The argument furthermore was not exemplified by any particular instance of the enforcement of the terms of the All India Industrial Tribunal (Bank Disputes) Award in Part B States and a general assertion that some of the terms have been applied in Part B States to my mind cannot give jurisdiction to this Tribunal. The contention accordingly prevails with the result that the claim failed and the award is set aside.

(2) **G. Mohanasundaram**—The applicant joined the Bank's service in 1947 on a salary of Rs 50 plus Rs 15 Dearness Allowance at Madras. His services, however, were abruptly terminated on the 4th January 1950 without assigning any reason in the order of discharge. It was alleged by the applicant that in point of fact no written order of discharge was served upon him and he was only verbally asked to leave the post on payment of one month's salary in lieu of notice. The Bank representative, in reply submitted that the applicant had become surplus to the requirements of the Bank and some retrenchment had become necessary on account of the slump in the Bank's business. The Bank representative at the same time admitted that no prior permission of the Tribunal was obtained and faintly argued that no such permission was necessary in the case of retrenchment.

Shri Parthasarathy, Counsel for the applicant relied upon the Provident Fund Account book and claimed that if the applicant was not a Bank's employee as urged by the other side (that he was a nominee of the Contractor cashier) he could not have the benefit of Provident Fund. It was further argued that the All India Industrial Tribunal (Bank Disputes) in their award (at page 61) Para 136 have held that the employees of the Cash Department are as good employees of the Bank and under the cashier contractor system they could not be excluded from category of Bank employees. This dictum has already been followed by me in some previous awards and if that be so the express permission under Section 33 before the termination of the services under the new Act was absolutely necessary. In the result this claim must succeed and the same is allowed with the direction that the applicant will be taken back into the service of the Bank within one month from the date the award comes into operation and he will also be entitled to the salary and allowances permissible for the period of six months prior to his reinstatement.

Reference No. 32 of 1950

INDIA BANK LTD

APPEARANCES Shri K. R. Krishnaswamy in person

Shri Nittoor Sreenivasa Rau, Advocate, for Shri K. R. Krishnaswamy

Shri B. S. Parthasarathy, Advocate, for Shri Ramkrishna Iyer

Shri S. Subramanian, Jt. Secretary, and Shri V. N. Vellaiyan, Member, Madras Provincial Union of Bank Employees, Madras, for the employees of Tiruchirappalli Branch

Shri V. Guruswamy in person

Shri V. Kameswara Iyer, Advocate, for Shri V. Guruswamy

Shri C. Raghabachari, Manager, for the Bank

(1) **K. R. Krishnaswamy**—The complaint of the applicant put briefly is that he joined the Bank's service as Chief Cashier of Bangalore Cantt. Branch in October 1943 and worked there till August 1946 when he was transferred to Bangalore City (Main) Branch and continued to work there till 7th December 1949 when his services were abruptly terminated and he was replaced by another person who was working as Chief Cashier in the Civil Station Branch who was junior to him both in qualifications and length of service. His grievance is that he was discharged from service without any good cause and without obtaining the prior permission of the Tribunal under Section 33 of the Act. Coming to the objection raised by the other side that the Tribunal has no jurisdiction over Indian States as Bangalore is a State it was contended that the objection was not valid inasmuch as the jurisdiction has already been extended by the Adaptation of Laws Order promulgated by the President on the 26th January 1950. On merits it was submitted that the other side in the written statement has not disputed the facts and it needs no further comment. Reliance was, however, placed on some documents:—(1) Certificate dated 14th October 1949 issued by the Manager Bangalore City in favour of Shri K. R. Krishnaswamy (Ex. A) and (2) Certificate dated 12th October 1949 issued by the then Manager Bangalore City in favour of the subject (Ex. B). It was further argued that the subject had received his annual increments regularly which clearly indicate that his work was regarded satisfactorily by the superior officers. Finally it was maintained that the order of discharge was not warranted by the facts and the Bank was not justified in dispensing with his services to replace him by a junior hand. The

relief sought was for reinstatement as well as payment of emoluments for the intervening period.

Shri Raghobachari, the Bank representative, as alleged in the written statement, raised the preliminary objection that this Tribunal has no jurisdiction to entertain this application inasmuch as the same has emanated from a State over which the old Act of 1947 was not applicable. It was contended that although the Act has been amended but no retrospective effect could be given in old cases which were to be governed under the old Act of 1947. Reliance was placed on the Delhi State Bank Disputes Award of this Tribunal, published in the *Gazette of India* dated 30th December 1950 (page 1143) in the case of Tripathi and others. On merits it was submitted that adverse reports were being received from the very beginning against the applicant and in this connection reliance was placed to the following—

- (1) Confidential Report dated 1st August 1944 (Ex 1).
- (2) Confidential Report dated 19th March 1945 (Ex 2)
- (3) Confidential Report dated 17th September 1945 (Ex 3)
- (4) Confidential letter No Ban/Cy/1367, dated 23rd June 1948 from the Manager, Bangalore City to the District Manager, Madras (Ex 4)
- (5) Communication dated 25th June 1948 (Ex 5).

It was argued that as revealed by these reports the applicant was given a fairly long time to improve his work but he failed and the Bank was constrained to terminate his services and in addition to that due to the shrinkage of business in Bangalore Branch the retrenchment in the staff had become necessary.

As the cause of action arose in Bangalore, one of Part B States of India, the application is not entertainable for want of jurisdiction and the reasons need not be recapitulated which have already been given while dealing with the case of Sri Bhimsena Rao (of Imperial Bank of India) in this award. The one main reason in this respect is that although the Act has been amended yet no retrospective effect can be given to old cases which were to be governed under the old Act and in the light of the finding given in the case of Tripathi and others in the Delhi State Bank Disputes Award of this Tribunal, this claim suffers from the same defect and must fail. The same is disallowed.

(2) **N. Rajagopalan.**—The applicant did not turn up despite service of the notice and addressed a letter to the Tribunal dated 5th February 1951 wherein he was stated that he was unable to come to Bangalore owing to unavoidable domestic circumstances. The case was heard *in absentia* under the provisions of Rule 19 of the Industrial Disputes (Central) Rules. The Bank representative while disclosing the facts of the case produced a communication dated 28th November 1949 (Ex 1) (which purports to have been signed and addressed by Shri N. Rajagopalan to the Deputy Manager, Bharat Bank Head Office, Delhi, through the Manager, Bharat Bank Ltd. Tiruchirappalli) and submitted that the communication is borne out by its contents was his resignation and as such the case was not entertainable because the resignation was accepted by the Bank authority and the matter had set at rest. It was maintained that the claim was not entertainable and the allegation made in the claim that he was compelled to resign his job was not correct and was untenable. It was also argued that it was well within the right of the Bank authority to transfer one of his employees and if he was not ready to proceed no question of coercion or compulsion arises. In regard to the compensation for loss of employment made in the application, the Bank representative stated that in view of the resignation the question of compensation does not arise and that his security has already been refunded.

In the absence of any evidence adduced in support of the allegation that the resignation letter dated 28th November 1949 (Ex 1) purports to have been signed and addressed by Shri Rajagopalan to the Deputy Manager Bharat Bank was written under duress and did not amount to resignation I have no alternative but to accept the interpretation put by the Bank on it. In the result the claim fails and is disallowed.

(3) **K. Ramakrishna Iyer.**—The applicant joined the Bank's service in 1945 at Karaikudi Branch and was subsequently transferred to Combatores in August 1949 as a Relieving Officer. His services were however terminated on the 20th April 1950 by a letter served on him on the 4th May 1950 without assigning any reason. It was submitted on his behalf that the alleged charge levelled against him viz that he did not report the transaction about Shri Chettiar was not duly enquired into and regarding the additional charge dated 28th March 1951

(Ex C) wherein new facts were stated, the Bank did not even afford an opportunity to the applicant for explanation. It was contended that the applicant was working under the directions of the Manager and was not directly concerned with the working of the Branch and as such he could not be held responsible for the alleged mistakes which constituted the charge sheet. Finally, it was urged that no enquiry committee was set up to investigate the matter nor the express permission of the Tribunal was obtained under Section 33 and as such the order of discharge was liable to be set aside.

The Bank representative raised the preliminary objection that Shri Iyer did not satisfy the definition of workman and was an officer and as such his case was not entertainable by this Tribunal. It was further emphasised that Shri Iyer had himself admitted that he was an officer and worked as Manager at more than one places and at the time of the termination of his services he was also working as Relieving Officer, Coimbatore. On merits the Bank representative argued that the charges against the applicant were of serious nature and he was given full opportunity to meet the same and the matter ultimately came up before the Board of Directors and was duly considered. It was further argued that this was incorrect to say that no enquiry was made because the Deputy Manager actually flew to Coimbatore to conduct the enquiry at the spot and the applicant was given opportunity to lead evidence in defence. Finally, it was submitted that the applicant himself in one of his letters addressed to the management admitted that he had committed these mistakes which constituted this charge and in face of his admission, the line of defence now taken by the applicant was untenable.

Now this claim in the first instance fails on the short ground that the applicant was admittedly working as Manager at several places and at the time of the termination of his service, he was working as Relieving Officer and as such in the light of the finding given in the Delhi State Bank Disputes award by this Tribunal, he did not satisfy the definition of workman under Section 2(s) of the Act. On merits also in consideration of all the facts and circumstances it is abundantly clear that certain charges were levelled against him and the enquiry was made on the spot and he was given an opportunity to file his explanation and to meet the charges. The matter ultimately was considered by a Committee of Directors and keeping in view the procedure adopted in the enquiry, I do not think that any case has been made out for interference even on facts. The net result is that the claim fails and is disallowed.

(4) Closure of Tiruchirappalli Branch.—The case put forth by the Provincial Union of Bank Employees, Madras, on behalf of the employees of Tiruchirappalli Branch briefly is that the Bank authorities had given an undertaking before the All India Industrial Tribunal (Bank Disputes), Bombay, to bring no change in the conditions of service of the employees but notwithstanding of that the Bank closed this Branch on the 14th February 1950 and refused to absorb the employees in other branches. It was contended that the conduct of the Bank in resiling from the terms of the agreement amounted to flagrant violation of Section 33 of the Act. It was further argued that no prior permission of the Tribunal was obtained before the closure of the Branch and the consequent retrenchment of the employees was thus bad in law. The next argument advanced in this connection was that the principle of 'last come first go' was not applied in retaining the services of the employees and some of the senior and old employees suffered accordingly.

The Bank representative in reply submitted that the agreement referred to by the other side was no doubt made on the 6th March 1950 before the All India Industrial Tribunal (Bank Disputes), Bombay, but the same was not binding upon the Bank authority in view of the fact that Union people staged a walkout and did not respect the undertaking. It was next urged that the claim related only to 4 employees as borne out from the application dated 2nd May 1950 and the cases of other members now added were not entertainable by the Tribunal. On merits, the Bank representative argued that the policy of closure was adopted on the advice of the Reserve Bank of India to close down some of the branches which were uneconomic Units and that the retrenchment was not made to do any harm to the employees of the branch. Reference was also made to the decisions already given in the case of the closure of other branches at Aiohar, Bhiwani, etc. by this Tribunal.

In reply, Shri Subramanian, the Employees Union representative, stated that apart from the undertaking no change could have been made in the conditions of service without the prior permission of the Tribunal and the discharge of no

1119
less than 7 employees was manifestly the result of the highnangedness of the management. In regard to the number of the applicants, it was explained that the original application was signed by the clerks and the menial staff did not sign, but in point of fact it was all the seven members who had moved the Tribunal. Lastly it was urged even if the closure was justified the Bank should have absorbed some of the employees as they had to the length of their service and seniority.

This Tribunal had already dealt with some of the Branches of Bharat Bank which have since been closed in other States and reinstatement of the retrenched employees was not allowed and only retrenchment relief was granted. The closure of this Branch of Tiruchirappalli is a link in the chain of closing some of the branches in pursuance of the policy adopted by the Bharat Bank long ago. I therefore see no good reason to make departure in this case and I am afraid the reinstatement of the employees, who have suffered no doubt, shall have to be disallowed. At any event the affected seven employees who moved this Tribunal,
viz —

- (1) R Jambunathan, Clerk
- (2) R Vasudevan, Clerk
- (3) V Viswanathan, Clerk
- (4) R S Rangarajan, Chief Cashier
- (5) G Sabhapathy Pillai, Guard
- (6) L Srinivasan Pillai, Peon
- (7) F Arumugan, Peon,

shall be entitled to retrenchment relief at the rate of half month's salary for each completed year of service plus all allowances permissible under rules. The Bank is accordingly directed to make payment of the amount within one month from the date when this award comes into operation. Awarded accordingly.

(5) **V. Guruswamy.**—He joined the Bank's service on 16th June 1943 as Accountant and was subsequently promoted as Manager in June 1946 and worked as such at several branches. The last branch where he happened to work as Manager was Tiruchirappalli Branch which was closed in February 1950 with the result that the employees of the Tiruchirappalli Branch were retrenched but Shri Guruswamy's services were not straightaway dispensed with and he was directed to join his duty at Salem Branch where he joined on 12th June 1950. Ultimately he came under retrenchment and his services were terminated on the 19th August 1950 on payment of one month's salary in lieu of notice. The reason assigned was that he had become surplus on account of the closure of Tiruchirappalli branch whereupon the applicant moved the Tribunal against his order of discharge.

A preliminary objection was raised by the Bank in this case that Shri Guruswamy was an officer as he had been in-charge of several branches and worked as Manager and thus did not satisfy the definition of workman as laid down under Section 2(s) of the Act. This was, however, controverted on behalf of Shri Guruswamy by Shri V Kameswara Iyer Advocate and it was urged that with the closing of Tiruchirappalli Branch the services of Shri Guruswamy were not retrenched and he was directed to join Salem Branch. And when he submitted his travelling allowance bill in respect of his transfer to Salem, he was advised by the Bank's letter No V 41/HO/EST/13335, dated 12th July 1950 that with the closing of Tiruchirappalli branch the applicant had ceased to be designated as Manager. The argument was further stressed that in view of the admission of the Bank Shri Guruswamy did not join Salem branch as Manager and in point of fact he was working as Accountant and Cashier, and as such at the time of the termination of his services he was not working as Manager and thus satisfied the definition of workman. His monthly salary moreover was only Rs 115 much less than Rs 500 and merely by having worked as Manager on previous occasions he could not be excluded from the definition of workman. On the other hand, Shri Raghobachari, on behalf of the Bank argued that Shri Guruswamy was not treated as Manager only for the purposes of travelling allowance only as on the closure of the Tiruchirappalli branch no duty was assigned to him during the period when he went from Tiruchirappalli to Salem and the Bank had to consider as to what duty should be assigned to him. It was maintained that as a matter of fact he continued to remain an officer as he was.

Now the argument advanced on behalf of the Bank on scrutiny runs counter to their own admission made in the letter dated 12th July 1950 which may well be quoted in view of its significance:—

Ex. B.

The Manager,

Bharat Bank Limited,

Salem.

Dear Sir,

Re: T.A. Bill dated 1st June 1950 for Rs. 100-8-0 of Shri V. Guruswamy.

With reference to the representation of the above received under cover of your letter No. SLM/EST/11252, dated 22nd June 1950, we have to advise that after the closing of Branch Office Tiruchirappalli Shri V. Guruswamy ceased to be designated as Manager and as such his T.A. bills have been passed correctly as per rules.

He may be informed accordingly.

Yours faithfully,

(Sd.)

Superintendent,

Establishment Deptt.

Shri Guruswamy moreover was admittedly discharged by Head Office letter No. V.41/HO/EST/1311, dated 19th August 1950 (Ex. D) wherein no designation has been mentioned against the name of Shri Guruswamy. It appears that the management was rather at pains to avoid giving him any designation although he worked at Salem for more than a month. It was not denied that he worked at Salem branch as Accountant as well as Cashier and was not sitting idle. It clearly follows from all these circumstances that on the closure of Tiruchirappalli branch when other employees were retrenched straightaway, Shri Guruswamy was directed to join at Salem not as 'Manager' but on some other duty and he might have accepted the duty of lesser responsibility under the stress of circumstances. The Bank as stated above furthermore did not treat him as Manager when he was at Salem for the purpose of his travelling allowance and it can be safely inferred that he had ceased to be designated as Manager as stated by Bank in their own letter of 12th July 1950. For all these reasons it seems that he was not working as Manager at the time of his termination of his services and was holding some such post to which no reference has been made by the Bank Manager in the order of discharge dated 19th August 1950 and he cannot be excluded from the definition of workman when his position was relegated on the closure of Tiruchirappalli branch to that of the Accountant or Cashier. On merits, the position is also confusing as the management ultimately dispensed with his services on the plea of retrenchment although in the first instance they gave him a chance to work at Salem as Accountant and what appears to me is that in one sense the plea of retrenchment on the closure of Tiruchirappalli Branch exactly does not fit in because he was reverted to some other post at Salem and was discharged some time after. At any rate even if his case be considered on the plea of retrenchment he could not be treated as Manager and the preliminary objection does not prevail. The same is over-ruled. The Bank representative on the facts of the case faintly argued that attempt was made to absorb him and he was asked to join Salem branch and then as an Accountant at Madura on a leave vacancy but ultimately the Bank was constrained to terminate his services. I may say in passing that this factor rather supports the view taken in dealing with the preliminary objection that Shri Guruswamy was retrenched as an Accountant on the closure of Tiruchirappalli branch and that the Bank was rather hard upon him to terminate his services abruptly on the plea of the closure of Tiruchirappalli Branch which took place earlier. Now no permission was obtained to discharge the applicant and it is a fit case for reinstatement, but keeping in view the peculiar circumstances under which Bharat Bank has closed several branches which have already been dealt with by me in my previous awards in the States of Delhi, Punjab and Madhya Pradesh, I have no mind to consider the question of reinstatement for the reasons given therein. At any event the applicant is entitled to retrenchment relief which has already been awarded in the other cases also viz. half month's salary for each completed year of service plus allowances permissible under the rules. In the result the claim for reinstatement is disallowed but the Bank is directed as consequential relief to pay him half month's salary for each completed year of service plus all allowances within one month from the date when the award becomes effective.

Reference No. 34 of 1950

CANARA BANK LTD.

APPEARANCES: Shri S. R. Srinivasa Rao in person.

Shri R. Janardan Rao in person.

Shri K. S. Sebastian, Advocate, for Shri Srinivasa Rao and Shri Janardan Rao.

Shri P. S. Nayak, General Manager, for the Bank.

(1) **S. R. Srinivasa Rao.**—The applicant joined the Bank's service in March 1930 and worked in various capacities and was ultimately promoted as an Agent and worked for about 3 years at Badagara wherefrom he was transferred to Cochin and thence to Alleppy as Agent. He remained also in-charge of Madura Branch and worked as an Agent at Bangalore and Secunderabad. It was alleged *inter alia* that in the course of his 17 years' continued service he discharged his duties diligently and to the satisfaction of his superiors but his services were terminated on the 25th August 1947 as per letter (Ex. A) wherein it was stated that the Bank was constrained to terminate his services on payment of one month's salary in lieu of notice on the ground of retrenchment. It was argued on his behalf that the procedure adopted by the Bank was contrary to the directions given in para. 322(7) of the All India Industrial Tribunal (Bank Disputes) award. It was also contended that although the services of Shri Srinivasa were terminated in August 1947 earlier than 13th June 1949 yet his case was triable by this Tribunal and reference was made to paragraph 2 of the replication dated 13th October 1950. The relevant portion of replication reads as follows:—

"Para. 2 The objection in Para. 2 is also not maintainable. The order dated 21st February 1950 of the Central Government, is only of an enabling character. It cannot be interpreted to prevent employees who have been discharged before 13th June 1949 from seeking reliefs from the Industrial Tribunal under the provisions of the Industrial Disputes Act (Act XIV) of 1947.

The said Government Notifications issued under section 7 of the Statute are only meant for the purpose of constituting the personnel and locations of the Tribunal and do not touch the jurisdiction of the Tribunal created by the Act, which does not specify any time limit for taking up the disputes to the Tribunal. Even if the said notifications, were to impose limitations, on the powers vested in the tribunal by the Act, the notifications being ultra vires of the Act are void and inoperative to that extent.

Hence this Tribunal has got full jurisdiction to try and dispose of the matter."

In reply the Bank representative raised more than one legal objections:

- (1) That Shri Rao worked as Agent and was an officer. Hence his application was not triable by this Tribunal.
- (2) The Reference relates to the disputes arising after 13th June 1949 as laid down in the Notification No. LR.2(273), dated 21st February 1950 as well as the date specified in the Schedule attached with the Reference and the cases earlier to 13th June 1949 are not entertainable by this Tribunal.
- (3) It was also urged that no individual is entitled to bring his case before the Tribunal and it were only the industrial disputes taken up by employees unions on the basis of collective bargaining, which are to be tried and as such Srinivasa Rao's case did not amount to industrial dispute.

Now the services of Shri Rao were admittedly discharged in August 1947 and he did not move the All India Industrial Tribunal (Bank Disputes) earlier when that Tribunal was functioning. Attempt was however made to argue that it was a continuing cause of action, but the applicant neither came into the witness box to explain the position nor adduced any evidence to show as to how the cause of action of 1947 continued for the purpose of extending the limitation. Shri Nayak, General Manager of the Bank, cited some authorities also in support of the third contention raised by him but I do not think it necessary to take much notice of these authorities when the one objection *viz.* that the cause of action arose much earlier than 13th June 1949 knocks the bottom of the claim. The Notification No. LR.2(273), dated 21st February 1950 deals with causes which arose after 13th June 1949 or were apprehended to have arisen after that date and obviously the cause of action which arose in 1947 does not fall within the

ambit of the Reference and must fail. Shri Rao, furthermore, admittedly worked as Agent and sub-agent at several places and in the light of the finding given in the Delhi State Bank disputes award by this Tribunal, he was an officer and does not fall within the definition of workman and consequently the Tribunal has no jurisdiction over him. The application suffers from more than one malady and the same is disallowed.

(2) **P. Narayan Shenoy.**—The applicant was not present nor any representative of the Employees Union came forward to represent his case and the application was therefore heard in abstentia under the provisions of Rule 19 of the Industrial Disputes (Central) Rules. The facts disclosed by the Bank representative briefly are these.

The applicant was an old employee of the Bank, but it so happened that in the beginning of the year 1950 the Bank management in the interest of the institution thought of reducing the number of the employees on their rolls. The management resorted to the method of taking the staff into their confidence and called upon the members of the staff to choose as to whether they would like to resign and avail all the facilities offered to them or the retrenchment policy contemplated by the Bank should have its own way. It was further alleged on behalf of the Bank that the applicant agreed of his free will to tender the resignation and he was paid off his salary due upto 31st January 1950, his own Provident Fund contribution as well as Bank's contribution in full with interest amounting to Rs 1698/6/11 and the gratuity amounting to Rs 3,006 being 18 months salary as well as bonus for the year 1949 amounting to Rs 163/3/9.

On the other hand the applicant who has not made his appearance stated in his application that his resignation was brought about by coercion and he demanded one month's salary in lieu of notice also in his application. The applicant, however, after the hearing of the case sent his written arguments by post which were placed on the record and on perusal I find that he has tried to show that the resignation was forced upon him and that he had tendered the resignation under certain pressure and coercion. It was also urged in these written arguments that the Bank had violated the undertaking given to the Industrial Tribunal for taking compulsory resignation and asked for reinstatement in the service of the Bank and payment of salary from the date of his resignation.

It was not denied that the applicant was paid no less than a lump sum of about Rs 5,000 in satisfaction of his Provident Fund and by way of gratuity which extended to 18 months' salary. He was also paid the arrears of his salary to the termination of his services with interest and it seems clear to me that the man preferred to have the benefit of receiving a lump sum including the gratuity. The plea advanced by the Bank is more convincing that they took the subject into their confidence and explained the financial position of the Bank instead of giving effect to the retrenchment policy. The applicant moreover sent his written arguments by post only and it appears that he wanted to avoid to come into the witness box or to face the other side and in the absence of any evidence of coercion or duress it is difficult to place any reliance on the bare allegations made by the applicant in his application or in the written argument. In the result the claim fails and the same is disallowed.

(3) **R. Janardan Rao.**—The applicant joined the Bank's service on the 7th August 1937 and began his career as an unpaid probationer. He was however sometime after appointed as a clerk and subsequently promoted to the post of an Accountant in Cochin office. In September 1949 a charge was levelled against him in connection with the missing of a Bank's letter and the Supervisor of the Bank was deputed to conduct the enquiry. The report of the Enquiring Officer went against him and the applicant was transferred to Calicut. It was alleged on his behalf that in January 1950 he was persuaded to resign on the ground that his work had deteriorated and his work was unsatisfactory. He was also threatened that if he would not resign he would be summarily dismissed and would thus be deprived of the benefits of Provident Fund etc. It was further stated that he tendered his resignation under forced circumstances and the same was written on the dictation of the Supervisor. It was claimed that the resignation was not voluntary and the relief sought was reinstatement with retrospective effect on payment of the salary for the intervening period and the allowances permissible under rules. Shri Nayak General Manager of the Bank in reply raised a preliminary objection to the effect that the remedy open to the applicant was under Section 41 of the Shops and Establishment Act Madras which he did not avail and that this application was not entertainable before this Tribunal. I however repel the objection as appeal was not competent under Section 41 of the said Act in a case of resignation.

On merits it was alleged that the Bank authority in good faith in order to retrieve their financial position thought of reducing their number of employees and while contemplating the policy of retrenchment took the staff into their confidence and explained to them the whole position. The Bank accordingly called upon some of the members to submit their resignation and avail benefits by way of Provident Fund, gratuity etc. and Shri Rao was one of them who agreed to tender his resignation of his free will. He was accordingly paid salary up to 19th January 1950 as well as his own Provident Fund contribution plus the Bank's contribution in full and gratuity amounting to Rs. 2,025. He was also given the bonus for the year 1949 amounting to Rs. 153-1-2. It was argued that the applicant was satisfied at that time as evidenced from his resignation letter (Ex. A) and after having availed all benefits filed this claim. The Bank representative categorically denied the allegations in regard to any coercion or duress and maintained that in face of the resignation letter the claim of the applicant was not sustainable and was made in order to harass the Bank. The last paragraph of the resignation letter (Ex. A) reads as follows:

Ex. A.—“The gratuity may be paid to me in a lump sum so that I may be able to start some business or so, in case I fail to procure a new job immediately.”

This part of the statement is self-explanatory and leaves no room for doubt that the applicant agreed of his own accord to avail the benefits which were accruing to him in the form of lump sum and tendered his resignation. I have therefore no hesitation in agreeing with the Bank's contention that the applicant moved the Tribunal *malu fide* for getting something more. There is no substance in the claim and the same is disallowed.

(4) **M. S. Kini.**—A letter dated 2nd February 1951 purporting to have been sent by the applicant was received by the Tribunal wherein it has been stated that the applicant does not want to pursue his claim and the same may be taken to have been withdrawn. The claim is accordingly filed without adjudication.

Reference No. 36 of 1950

CANARA INDUSTRIAL AND BANKING SYNDICATE

APPEARANCES.—Shri N. K. Kamath, Agent, for the Bank.

None for the applicant.

K. Achanna Shetty.—The applicant did not make his appearance nor any Employees Union representative came forward to represent his case and accordingly this case was heard in absentia in accordance with the provisions of Rule 19 of the Industrial Disputes (Central) Rules. The facts as disclosed from the application put briefly are that Shri Shetty was employed by this Bank by letter No. 1360/4780/STF, dated 23th July 1947 and was appointed as a clerk at Salligram branch. He was subsequently transferred to Kasaragod Branch in October 1949 but he refused to join his duty there and filed his resignation dated 11th October 1949 (Ex. 1) brought on the record. This was accepted by the Bank and his services were terminated. He, however, made an application sometime after 22nd March 1950 (Ex. 2) wherein he claimed the difference in the salary under the terms of the All India Industrial Tribunal (Bank Disputes) award for the period commencing from June 1949 to October 1949. The Bank did not accede to his request and the Tribunal was moved through this application.

The Bank representative in reply submitted that at the time when the Interim award of the All India Industrial Tribunal (Bank Disputes), Bombay was made and implemented by the Government by Notification, Shri Shetty was not in the service of the Bank and thus could not come under the purview of the award. The argument advanced by the Bank is complete answer to the claim which therefore fails. The same is disallowed.

Reference No. 45 of 1950

INDIAN OVERSEAS BANK LTD.

APPEARANCES.—Shri G. Nagiah, Secretary, Indian Overseas Bank Employees Union, Madras, along with Shri S. Subramanian, Joint Secretary, Madras Provincial Union of Bank Employees, Madras.

Shri M. B. Jose, President, All Travancore Bank Employees Union, Alleppey, Trivandrum, along with Shri M. Frabakaran, Counsel, for Shri V. E. George.

Shri S. Easwara Iyer, Advocate, along with Shri S. R. V. Arasu, Assistant to G.M., and D. Varthamam, Legal Assistant, for the Bank.

(1) **G. Nagiah.**—He joined the Bank's service on the 13th June 1941 as a clerk and is still continuing in the service of the Bank. His grievance is that he was transferred to Purasawalkam branch on the 26th April 1950 much against his will. He, however, lodged a protest against the said transfer order but joined the duty. He was however served with a communication dated 14th October 1950 that his services were no longer required from 15th November 1950 on payment of one month's salary and allowances. The applicant thereupon moved the Tribunal under the Industrial Disputes Act wherein he sought the relief of reinstatement. The Bank thereupon re-considered over the decision and by their letter dated 18th November 1950, he was asked to join Tyagarayanagar branch. It was argued on behalf of the applicant that the fresh transfer to Tyagarayanagar amounted to change in the conditions of service and furthermore it cost him a loss of Rs. 10 per month by this transfer besides an extra expense of Rs. 20 by going there. The prayer of the applicant is for the re-transfer to the Central office where he was originally working and for the payment of the difference in the salary for the intervening period.

The Bank representative in reply argued that the prayer actually in the application related only to the transfer and other reliefs were not thought of initially and the same are now being added. It was next urged that the transfer did not amount to any change in the conditions of service and thus the provisions of the Industrial Disputes Act were in no way violated. It was also submitted that the transfer was occasioned on account of the exigencies of the situation and not on account of any unfair labour practice and that the employee was bound to agree to such transfer under the rules and regulations of the Bank and it was not open to him to question the transfer order. Finally, it was urged that the employee, when working in the central office, was in the habit of absenting himself frequently and the work suffered; consequently it became necessary to transfer him to some other branch and in the first instance he was transferred to local branch where the work was light but as he protested against that he was again re-transferred to Tyagarayanagar.

The outstanding question which falls for consideration in the case of transfer is as to whether the transfer by itself amounts to a change in the conditions of service under Section 33 of the Industrial Disputes Act. I have already held, while dealing with some cases of other States, that normally it is the right of the employer to effect transfer owing to the exigencies of service and the same does not amount to any change in the conditions of service for the simple reason that it does not form the terms of the appointment. Transfer of course influenced by ulterior motive or in consideration of the Trade Union activities of the employees stands on a different footing and in some cases transfers have been set aside. In this particular case I find that a transfer in the same town from one place to another does not amount to a change in the conditions of service and furthermore in the absence of any bad labour practice it is too much to say that the Bank was out to harass the employee and to my mind the reason given by the Bank *viz.* that the applicant was in the habit of absenting from the Central office and was accordingly transferred appears to be convincing. The other demand namely payment of difference in salary does not arise and furthermore is devoid of any merit. The result is that the claim fails and is disallowed.

(2) **P. Sriramulu.**—This employee joined the Bank's service in the middle of 1946 and continued working throughout at the Central office for a pretty long time. He was, however, transferred to Tyagarayanagar branch in April 1950 and thereby suffered a reduction in salary of Rs. 10 in the allowance. It was contended on his behalf that the transfer was made with the motive of victimization and as such the Bank has violated the provisions of Section 33 of the Industrial Disputes Act.

The Bank representative, in reply, argued that the transfer was the result of the exigencies of the service and was not conceived on account of any bad labour practice. Reduction in the allowance, the Bank representative maintained, was also the result of transfer because this allowance is given to those who work in the central office and furthermore that this allowance had since been abolished while implementing the All India Industrial Tribunal (Bank Disputes) award and now cannot be claimed by any one of the employees. Finally it was urged that the transfer by itself does not form a part of the items given in the Schedule attached with the Reference No. LR.2(273), dated 21st February 1950 and the Tribunal has no jurisdiction to take seizin of that. In the light of the finding already given by me in the case of Shri G. Nagiah this claim must also fail inasmuch as transfer from one place to the other in the normal course of service does not amount to change in the conditions of service and furthermore the question of transfer is outside the scope of the Reference having not been mentioned in the Schedule. The claim is accordingly disallowed.

(3) **Madhavan Pillai.**—This case was preferred through the General Secretary, Indian Overseas Bank Employees Union, Madras and the Secretary who appeared on behalf of the subject has stated that Shri Pillai has since been re-employed elsewhere and his claim was therefore not being pressed. The application needs no adjudication and the same is filed.

(4) **Kallabiran.**—This case was also not pressed by the Secretary, Indian Overseas Bank Employees Union, Madras and the same is filed without adjudication.

(5) **S. Krishna Pillai.**—He joined the Bank's service on the 4th June 1948 but his services were terminated under the retrenchment scheme by Bank's order dated 7th February 1950. It was contended on his behalf that the retrenchment was effected during the pendency of the proceedings of the All India Industrial (Bank Disputes), Bombay, without having obtained the prior permission of the Tribunal and as such the order of retrenchment was bad in law. The Union representative stated that Shri Pillai has since been re-employed and consequently the relief of reinstatement has become unnecessary and the same is not being pressed; but as he suffered some losses during the period of his unemployment he was entitled to compensation or damages.

The Bank representative in reply raised the preliminary objection that the Union has no *Locus Standi* to represent the case inasmuch as the subject has already been re-employed and has thus ceased to be a member of the Union. It was further submitted that the applicant had already applied for the refund of Provident Fund which has been paid to him and he was granted a certificate to help him in seeking other employment and in these circumstances his case for compensation was not tenable. It was next urged that compensation does not form the part of the items mentioned in the Schedule and is thus beyond the scope of the Reference.

The Union representative in further reply controverted the argument and maintained that Shri Pillai was a member of the Executive Committee when the cause of action arose viz. on 7th February 1950 and the Union was therefore entitled to represent his case. Replying to the argument that the applicant had already satisfied his dues and did not ask for any compensation, the Union representative argued that the applicant agreed to accept the Provident Fund on account of financial stringency and that by itself is not a bar to claim compensation.

Now the only question for determination for me is as to whether Shri Pillai was entitled to any compensation. In consideration of all the facts and circumstances and in view of the conduct in giving discharge to all his claim while getting he Provident Fund I think it amounts to his acquiescence and the claim for compensation is thus not tenable. The item of compensation or damages furthermore is not mentioned in the Schedule and as such is beyond the scope of this Reference. In the result the claim fails on both counts and the same is disallowed.

(6) **Edwin Sundaram**, (7) **Miss Scott**, (8) **Miss Wilson.**—Their cases were not pressed and it was stated by the Secretary who appeared for the Union that they have since been absorbed somewhere else. The application needs no adjudication and the same filed.

(9) **Shri V. E. George.**—Joined the Indian Overseas Bank at its Alleppey Branch in October 1948 and his services were terminated according to his allegations in January 1950. The facts as disclosed from the application and by his Counsel put briefly are that soon after joining his service he joined the All India Senior Diploma Course in Commerce at S. D. College, Alleppey, in order to improve the prospects and as this course was for three years he had to complete it by April 1950. It was alleged *inter alia* that this fact of joining the College was very well known to the officers of this Branch and he was rather given every encouragement to qualify himself by having that diploma. He, however, received transfer orders and was called upon to report at Karalkudy branch of the Bank. He made a representation for the reconsideration of his transfer order but received no reply till 3rd September 1949. It so happened that he fell ill and applied for 4 days station leave with a view to go to his house at Thiruvella for change but he was confined to bed and he applied for extension leave supported by Medical Certificate. It was on the 12th October 1949 that he received a registered notice that his posting to Karalkudy was cancelled but he was asked to report at Madras immediately. The applicant has further stated in his application that he could

not comply with the order because he was awaiting the sanction of his leave and again invited the attention of the management to the effect that he had already earned three months privilege leave which was to his credit. He also applied to the All India Industrial Tribunal (Bank Disputes) for intervention in the matter of transfer but was directed to place his case before the Central Government Industrial Tribunal at Calcutta which he did. He, ultimately, received a communication dated 30th November 1949 from the local office that he was granted three months privilege leave but his services were terminated from the date of the expiry of the leave i.e. from 4th January 1950, whereupon he again requested the management to reconsider his case sympathetically but no reply was forthcoming. The relief sought in the application was for reinstatement.

Shri S. E. Iyer, the learned Counsel for the Bank, stating his case raised a preliminary objection that as the cause of action had arisen in Part B States the Tribunal has no jurisdiction to try this case. On merits it was stated that the services of Shri George were found surplus to the requirement at Alleppey Branch on the score of economy and he was transferred to Karakudy Branch instead of retrenching him straightaway.

Shri Prabhakaran, the learned Counsel for the applicant, in reply to the objection raised by the Bank regarding jurisdiction argued that under the fundamental rights laid down in the Constitution of India it is provided that no discrimination shall be made on the basis of descent and place of birth etc. and as such the Tribunal has jurisdiction over all subjects of Indian Republic. The argument was further stressed that in case the jurisdiction be not extended to the States, it would amount to denial of justice and protection given to the subjects of Part B States under the Constitution. The learned Counsel on merits once again argued that Shri V. E. George was never charge-sheeted nor afforded any opportunity to explain his position and his services were terminated on the plea that he had vacated his post by having not gone to Madras and report of duty as called upon. Reference was made to communication dated 20th April 1950 (Ex. A) regarding the termination of his services. It was also argued that the letter terminating his services was dated 17th October 1949 which was actually received by him on the 24th October 1949 and he was asked to join at Madras on the 19th which date had already expired and he could not join on the said date. It was reiterated that he was still going on with the course of studies and he addressed the Deputy General Manager on the 24th October for the reconsideration of his case but the Bank unjustifiably terminated his services for having disobeyed the order and the case accordingly was one of victimization.

Now the Tribunal was constituted under a specific Act viz. Industrial Disputes Act, 1947 which as it stood in 1947 or at the time of the cause of action viz. November 1949 did not extend to Part B States. It is laid down in Section 1(2) itself which deals with the point of jurisdiction that the Act extends to the whole of British India and the use of the word clearly covers only the provinces constituting British India within the purview of the Act. This point furthermore has already been considered in the case of Shri Bhimsena Rao (of Imperial Bank of India) in this award and Shri Tripathy and others in Delhi State Bank disputes award and it will serve no useful purpose to repeat the same arguments here once again; with the result that the claim fails on the point of jurisdiction and is disallowed.

- (10) Application filed by the staff of Quilon Branch, under the names of (1) L. V. P. Raju, (2) V. Krishna Pillai, (3) K. Rajam Amma, (4) R. Narayan Pillai, (5) A. Madhavan Pillai, (6) K. Neelkanta Pillai, dated 10th March 1950;
- (11) Application filed by the staff of Perambavoor Branch through R. C. Krishna and two others, dated 9th March 1950;
- (12) Application filed by the staff of Trivandrum branch through V. P. Narayan Pillai, P. Madhavan Pillai and three others dated 6th March 1950.

Interim Relief etc.—None of the members of the staff of the above Branches of Indian Overseas Bank came forward to pursue these applications and a letter, under the signature of one Shri R. C. Krishna of Perambavoor branch dated 15th February 1951 was received wherein it has been stated that the members of the staff could not attend in person and requests that "permanent award be also extended to Travancor-Cochin State". On the other hand another communication dated 1st May 1950 emanated from the office of the Agent, Indian Overseas Bank, Calcutta was received wherein it is stated that the Bank authority shall abide by the decision in respect of the applicability of the Interim Award granted by the All India Industrial Tribunal (Bank Disputes), Bombay to the employees of the

branches of the above-mentioned centres. In view of these two communications it was thought that the Bank was prepared to implement the terms of the All India Industrial Tribunal (Bank Disputes) award in the case of the branches of the above centres. But, the learned Counsel for the Bank at the time of hearing explained that the communication sent from Calcutta office did not amount to their admission to implement the terms of the said award and it was only advisedly stated that if other Banks agreed to implement the award in Part B States, this Bank would also abide by that. It was also stated at the same time by the learned Counsel that the benefits of the final award of the All India Industrial Tribunal (Bank Disputes), Bombay, have since been extended to all the branches in India including Part B States from 1st February 1951 and the question of the implementation of the Interim Award does not arise and furthermore that the Interim Award did not apply to Part B States as laid down in para 9 of the said award itself. The stand taken up by the learned Counsel on behalf of the Bank appears to be rather confusing if not self-contradictory.

After hearing the Bank's representative the impression that I made was that he was not prepared to take any definite position in regard to the implementation of the All India Industrial Tribunal, Interim award. It was unequivocally stated in their communication received from Calcutta office that they would abide by the terms of the Interim Award and would implement the same in Part B States branches and it has now been qualified in the course of arguments and it was argued that now the benefits of final award of the All India Industrial Tribunal (Bank Disputes) award have since been extended the Interim award relief is merged in that and at the same time it was urged that in case the Interim Award applies to Part B States this Bank will also abide by it. It was not contended straightaway that the Interim award does not apply in Part B States and consequently the argument was not much helpful. The other side was not represented and I had thus not the advantage of thrashing out the matter in all its implications.

At any event on the examination of all the facts and circumstances I am of the opinion that Interim award relief was not extended to Part B States which were not included under the scope of the Industrial Disputes Act of 1947.

It is however a different matter if the Bank by their own admission have implemented the Interim award in some cases or have now implemented the final award of the All India Industrial Tribunal (Bank Disputes) that implementation may well stand. But, as said above I am not prepared to take cognizance of the matter and would disallow the claims for want of jurisdiction.

Now, therefore, this Tribunal makes its award in terms aforesaid, this the 5th April 1951.

K. S. CAMPBELL-PURI,
Chairman,

Central Government Industrial Tribunal,
Calcutta.

[No. LR-90(114)]

S.R.O. 644.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to publish the following award of the Industrial Tribunal, Calcutta, in the industrial dispute between the banking Companies and their workmen in the State of Bihar.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA
6, ESPLANADE EAST, CALCUTTA-1.

Before Shri K. S. Campbell-Puri, B.A., LL.B., Chairman.

AWARD

Bank Disputes in the State of Bihar.

Under Notification No. LR-2(273), dated the 21st February 1950, the Central Government, Ministry of Labour, referred to this Tribunal for adjudication the industrial disputes that had arisen after 13th June 1949 or were apprehended between the employees of the Banks specified in Schedule I of the said Notification and their Employers, in respect of matters specified in Schedule II thereof.

Notices were issued to the Banks—

- (1) directing them to give due publicity to the Notification among their employees;
- (2) directing the employees to file statements of claim in the office of the Tribunal by 15th March 1950 and to furnish copies thereof to the employers on the same day;

128

(3) directing the Banks to file their written statements within ten days thereof, with copy to the employees; and

(4) directing the Banks to report for record to this Tribunal as to the manner in which due intimation had been given to the employees.

Notices were also issued to the Bank Employees' Unions to file their statements of claim.

Statements of claims were received from the employees of different Banks—from Head Offices as well as branch offices—and also from the Unions. Written statements were duly filed by Banks concerned.

The hearing of disputes emanated from the State of Bihar started at Patna on the 12th March 1951 in the High Court Buildings and continued upto 20th March 1951 from day to day. The representatives of Imperial Bank of India, Punjab National Bank, United Commercial Bank, Bank of Bihar, Bharat Bank and Hindustan Commercial Bank Ltd. as well as the Secretary, Punjab National Bank Employees Union, Calcutta, General Secretary, Bank of Bihar Employees Union, Secretary, Bihar Bharat Bank Employees Union, Patna, attended the proceedings. Some of the applications were filed through the Vice-President, Gaya District Bank Employees Association, Gaya and the Vice-President, United Commercial Bank Employees, Giridih Branch; but none of the representatives of these Unions made their appearance and the applications were heard in absentia under Rule 19 of the Industrial Disputes (Central) Rules, 1947. Some individual applications were also heard and the applicants present in person addressed the Tribunal. This award shall govern the complaints of employees of Banks of Bihar State and will be dealt with Bank-wise as mentioned in the Cause List.

Reference No. 1 of 1950

IMPERIAL BANK OF INDIA LTD.

APPEARANCES:

Shri Ganga Prosad Agarwal in person Shri N. P. Agarwal, Advocate, for Shri Ganga Prosad Agarwal.

Shri S. K. Mullick, Counsel, along with Shri H. C. Sarkar. for the Bank.

(1) **Ganda Prosad Agarwal.**—This case was to be taken up on the first day of hearing but Shri Sarkar on behalf of the Bank pleaded his inability and made a request for adjournment as some of the papers were not received and moreover the Imperial Bank's solicitor, who was in-charge of the case was unavoidably detained. The adjournment was granted on payment of costs and the case came up for hearing on the 15th March 1951.

Shri Mullick, learned Counsel for the Bank raised a preliminary objection to the effect that services of Shri Agarwal were admittedly terminated on the 1st October 1947 and consequently his case was outside the scope of the Reference which deals with those cases only in which cause of action had arisen after 13th June 1949 or was apprehended to arise. Shri Mullick argued that this date viz. 13th June 1949 has been specifically mentioned in the Notification as well as in the Schedule II and as such this Tribunal has no jurisdiction to take cognizance of this case. Shri Agarwal, Advocate, for the applicant however contended that although the disputes referred to under this Reference No. LR.2(273), dated 21st February 1951 relate to the disputes which had arisen after 13th June 1949 or apprehended to have arisen yet in this case the limitation was extended on account of the continuity of the cause of action inasmuch as the dispute remained pending before the Bank upto 3rd February 1950 as borne out by their letter Exhibit A. It was also stated that a cheque was sent to the applicant by the Bank in satisfaction of his dues, but he declined to accept it and the correspondence went on for a pretty long time and as such the cause of action was still continuing.

Now the dismissal order was admittedly passed in 1947 much earlier than 13th June 1949 and the argument advanced on behalf of the applicant viz. that the limitation was extended as it was a continuing cause of action, collapses to scrutiny even on facts when considered in the context of letter Ex. A relied upon by the Counsel. This is a Payment Order No. 26/134 (No. 1179, dated 3rd February 1950) and clearly indicates that the correspondence between the Bank and Shri Ganga Prosad Agarwal was in regard to the payment of his dues and had nothing to do with the order of dismissal. Furthermore Shri Agarwal frankly admitted that the applicant had made a representation regarding his dismissal through the Employees Association in 1948 but no reply was forthcoming from the Bank. It follows that even if any correspondence ensued between the Employees Association and the Bank on the subject, the same was closed in 1948 much

1129 earlier than June 1949, and at best the *terminus-quo* was the year 1948. Considering the legal aspect of the question the period of limitation is extended only when any admission is made by the other side, or the cause of action is a continuing one on account of the continuing nature of injury. In the case of discharge or dismissal from service, the injury is complete when the order is passed and it is not a continuing injury because the sufferance continues or the order is challenged by the other side. A continuing cause of action again is one which arises from repetition of acts or omissions of the same kind and not from an accomplished act. Similarly there can be no question of Banks admission regarding the right of the applicant, merely by replying to his correspondence on the subject, as an admission to prevent the running of time is always against a liability and not against any order passed by a competent authority.

Consequently it is idle to urge that the cause of action which actually arose in 1947 could be kept alive on the basis of certain correspondence, and the argument advanced by Shri Agarwal on behalf of the applicant appears to be inherently fallacious and devoid of any merit. The result is that the claim fails and the same is disallowed.

(2) **Gurga Posad.**—The applicant was not present nor any representative of the Bank Employees Union came forward to represent his case, which was heard in abstentia under Rule 19 of the Industrial Disputes (Central) Rules. Shri Mullick, Counsel, on behalf of the Bank, raised the preliminary objection that the cause of action arose earlier than 13th June 1949 and the complaint was not entertainable for want of jurisdiction. The arguments adduced in the previous case of Shri Ganga Prosad Agarwal were repeated and need not be recapitulated. The applicant as disclosed by his application worked as a Poddar at Muzaffarpur Branch and was discharged from the service of the Bank as he participated in a strike on 7th August 1946. The cause of action manifestly arose much earlier than the 13th June 1949 and as such is outside the scope of Reference as held by me in the case of Shri Ganga Prosad Agarwal. The claim accordingly falls on the ground of limitation as well as for want of jurisdiction and is disallowed.

(3) **Ram Chandra Prosad.**—The applicant was not present in spite of service effected upon him and his case was heard in abstentia under Rule 19 of the Industrial Disputes (Central) Rules. He was an employee of the Imperial Bank of India, Muzaffarpur Branch, and worked in the capacity of Poddar. It so happened that a shortage of Rs. 4,000/- was found in the cash on 1st August 1946 and the applicant was suspected of embezzlement and the matter was reported to the police and he was placed on trial and convicted but ultimately was acquitted from the Court of Session's Judge, Muzaffarpur. His services were terminated soon after the occurrence i.e. on the 2nd August 1946 and notwithstanding of his acquittal the Bank did not revise their decision. The applicant appears not to have moved their Lordships of the All India Industrial Tribunal (Bank Disputes) when that Tribunal was functioning and moved this Tribunal by his application dated 23rd March 1950. The termination of his services occurred in 1946 and the preliminary objection was made by the Bank's Counsel that the same did not fall within the scope of the Reference which deals with the causes arising after 13th June 1949 or were apprehended to have arisen. The point in question has already been discussed in the case of Shri Ganga Prosad Agarwal and need not be further gone into. The same arguments apply in his case with the result that the claim is disallowed for want of jurisdiction as well as on the point of limitation.

Reference No. 20 of 1950

PUNJAB NATIONAL BANK LTD.

APPEARANCES:

Shri S. Sanyal, Secretary, Punjab National Bank Employees Union, Calcutta, for Shri Kailash Bhagat.

Shri Permeshwar Persad Vishwakarma in person.

Shri D. N. Misra in person.

Shri R. P. Shukla, General Secretary, Bharat Bank Employees Union, Patna, for Shri D. N. Misra.

Shri A. L. Kapoor, Manager, for the Bank.

(1) **Kailash Bhagat.**—The applicant in spite of service of the notice did not make his appearance and Shri Kapoor, the Bank representative, stated that some negotiations were afoot for arriving at a settlement with the applicant. The case was accordingly adjourned to 14th March 1951. Shri Kapoor on the next hearing produced a communication dated 13th March 1951 (which purports to have

been signed by Shri Kailash Bhagat) and stated that Shri Bhagat was promoted as a clerk from 1st March 1951 and that he has withdrawn his claim. Another letter dated 13th March 1951 (Ex. 2) from the office of the Manager, Darbhanga, was also received to the same effect, and the Secretary, Punjab National Bank Employees Union, Calcutta, who also turned up on the next hearing did not repudiate the allegation of withdrawal. Under these circumstances the claim shall be deemed to have been withdrawn. The same is filed.

(2) **Permishwar Persad Vishwakarma.**—This claim was filed through the Vice-President, Gaya District Bank Employees Association, Gaya, but no office bearer of the Employees Association turned up on the 12th March 1951 when this case came up for adjudication and the case was heard in abstentia in the first instance but Shri P. P. Vishwakarma made his appearance on the following day and the case was heard afresh in the presence of both sides. His case is that when he joined the Bank's service his designation in the Bank was one of Record-keeper and his duties extended to (a) Maintenance of Register of stationery and handling of stationery (b) Passing of consumption voucher of stationery (c) Maintenance of old record register and current record register (d) Maintenance of records of vouchers (e) Branches Dak Receipt (f) Head Office Dak Receipt etc. It was averred that he was doing the work of clerk and record keeper both. It was further alleged that he was confirmed in his post as record-keeper from 16th February 1950 by District Manager's order dated 27th February 1950 (Ex. A) and in the light of his confirmation in the post of record keeper he was entitled to the benefit of Interim Award of the All-India Industrial Tribunal (Bank Disputes) with regard to his salary and other allowances of the Interim Award.

Shri Kapoor on behalf of the Bank submitted that according to the communication received from the Branch office his designation was that of a Daftry but he was not in a position to say anything with regard to the District Manager's letter (Ex. A) upon which reliance was placed by the other side. Shri Kapoor, however, urged next that in the Punjab National Bank the post of Record keeper is equivalent to that of a Daftry and as such the applicant cannot be taken in the cadre of clerks. Shri Vishwakarma in reply controverted the argument and maintained that he was still performing all those duties mentioned above and the same are clerical duties. It was further urged that the post of Record-keeper is that of clerical cadre and in the absence of any evidence that his designation was that of a Daftry as urged by the Bank representative he was entitled to the pay of a clerk which has been fixed by the All-India Industrial Tribunal (Bank Disputes), Bombay in their Interim Award *viz.* Rs. 82 plus Rs. 51-8 Dearness Allowance. His present pay, Shri Permishwar Persad Vishwakarma stated was Rs. 65-8 plus Rs. 42 Dearness Allowance only.

Now the matter considered in the light of Ex. A leaves no manner of doubt that Shri Permishwar Persad Vishwakarma was not working as a Daftry but as a Record-keeper and he was confirmed in that post by District Manager's order dated 27th February 1950. It is a different matter that some of the duties mentioned above may well be performed by a Daftry on certain occasion but the very designation given in the Bank's record acknowledges him as one of the incumbents of clerical cadre. The plea raised by the Bank that he was a daftry accordingly falls to the ground and it is to be considered as to whether he is entitled to the relief given by the Interim Award. The Bank representative did not dispute that the Interim Award was not implemented in the case of Shri Permishwar Persad Vishwakarma which drove him to file this complaint with the Tribunal. On the appraisalment of all the facts and circumstances I am satisfied that Shri Permishwar Persad was working as record-keeper which post is in the category of clerks and as such was entitled to the Benefit of the Interim Award. I would therefore direct the Bank to release him the said benefit *viz.* the difference in the salary at the rate of Rs. 82 plus Rs. 51-8 Dearness Allowance, instead of Rs. 65-8 plus Rs. 42 Dearness Allowance from the date of the Interim Award to the date of the final award. It is further directed that the order will be given effect to within one month from the date when the award becomes operative.

(3) **Tinal Raus.**—The applicant was not present nor any representative of any Employees Union came forward to represent his case. This application was therefore heard in abstentia under the provisions of Rule 19 of the Industrial Disputes (Central) Rules. His case as disclosed from the application is that he was working as a Pcon of Gaya Branch of the Punjab National Bank Ltd., and he was discharged on 11th July 1949. It was further alleged *inter-alia* that the Manager called him in his office in the month of July and he was asked to sign a paper typed in English and on his compliance he was told that his services had been terminated and that he would be provided with a job when any vacancy will arise. On the other hand, the management in the written reply have stated

that Shri Tinal Raut had absented himself from office on the 4th and 5th July 1949 without obtaining leave. He, however, applied subsequently wherein it was stated that he was unable to attend owing to illness but on the enquiry of the Bank it was reported that he had gone out on a marriage party and as such he had made a false statement for the purpose of leave. It was further argued that a local merchant also made a complaint against this Peon that he had stolen his watch when both had gone to a marriage party. The applicant was enquired orally and denied the allegation but the Manager found his explanation unsatisfactory and discharged him from service. Shri Kapoor, the Bank representative, however, admitted that no formal charge was given to Shri Raut nor he was called upon to submit his written explanation or to lead his defence to meet the charge levelled against him. Neither the complaint of the merchant nor a copy of the report, that the applicant had actually attended the marriage party on the 4th and 5th July 1949 for the days he had applied for leave on medical ground was produced. It appears that the Bank treated this case of dismissal very lightly and was under the impression that a member of the menial staff as the Peon was, could be discharged at any time without making any enquiry or affording any opportunity to explain. The procedure adopted manifestly is contrary to the provisions of Industrial Disputes Act and involves the basic right of the employees so far the security of service is concerned. I have accordingly no alternative but to set aside the order of discharge and allow his reinstatement. The Bank is directed to take him back in the service and pay him his salary and allowances permissible under the rules for the intervening period from the date of his discharge to that of his reinstatement within one month from the date when this award comes into operation.

(4) **D. N. Misra.**—This case was also heard in abstratis in the first instance under Rule 19 of the Industrial Disputes (Central) Rules but the applicant appeared in person and stated that his son was seriously ill and he could not attend earlier. Notice was given to Shri Kapoor, the Bank representative, and the case was heard afresh on the 20th March 1951 in the presence of both sides.

His case is that he was appointed as Jemadar at Aminabad (Lucknow) branch in 1946. He was, however, promoted to the post of Hundi Presenter-cum-Cashier at Gava on the 18th May 1947. Since then he has been working as Hundi Presenter-cum-Cashier, and his designation all along has been mentioned as Hundi Presenter-cum-Cashier in the leave register, attendance register and other allied records of the Bank including Provident Fund statement sent to the Head Office. It was urged on his behalf that the Interim Relief was not granted to him although he was working in the Cash Department and performing certain duties of Cashier. It was further argued that he worked as Hundi Presenter-cum-Cashier up to 22nd April 1950 when he was relieved from Cash duty and became only a Hundi Presenter. Shri Shukla on his behalf vehemently urged that the Bank was not justified in taking away those duties from him which were initially entrusted to him and he should now be promoted as a Cashier.

Shri Kapoor in reply stated that it was wrong to say that he was appointed as a Jemadar in Lucknow Branch. In point of fact he was appointed as a Peon as no post of Jemadar existed at Aminabad (Lucknow) branch. It so happened that the Cashier contractor of Gaya appointed Shri Misra as Hundi Presenter on the 18th May 1947 and not Hundi Presenter-cum-Cashier, and he was entrusted with the duties of Depositing cash with the Imperial Bank of India; and Sorting out and binding of notes into bundles, etc. Shri Kapoor argued that this extra duty only remained with him for about 1½ years and subsequently this extra duty of cash was taken away from him. Reliance was placed on the letter of the Head Cashier, dated 24th April 1950 (Ex. 1). Shri Kapoor next urged that in these circumstances Shri Misra was not entitled to the benefit of Interim award. In regard to the other part of claim that he should be promoted to the post of Cashier and be allowed to take up the work which he was doing previously, Shri Kapoor averred that as borne out from the report of the Head Cashier he was not trustworthy and was not fit to handle cash and the question of his promotion does not arise. It was emphasised that he is at best a Peon and cannot be promoted as Cashier.

I may say at the very outset that the part of the claim viz. that he should be promoted as a Cashier is not sustainable on the short ground that he has not been doing admittedly any work on the cash side for the last 2½ years when the Bank stopped taking any work from him, he previously used to do in addition to his duties as Hundi Presenter. Furthermore if he felt aggrieved after 24th April 1950 when the cash work was withdrawn from him he could have applied if that amounted to his demotion. His whole case initially was that he was entrusted with some duties which related to a Cash work and as such he was

not only Hundi Presenter but also his work was that of a Hundi Presenter-cum-Cashier. The emphasis was on the word 'cum' which clearly indicates that he was called upon to do extra work relating to the Cash Department and his actual post was that of Hundi Presenter; and on these promises it is too much to say that this Tribunal could promote him to the post of a Cashier when the matter has not even been considered by the Bank in that respect nor he has ever applied for that promotion. It appears that he was given some extra work which was subsequently withdrawn from him and he has taken it to heart that he was capable of performing the duties of a Cashier. It is also noteworthy in this connection that he never performed the duties of a Cashier and it was only some work relating to the cash viz. counting notes, making bundles and depositing money with the Imperial Bank and this type of work does not entitle any one to have qualified himself for that post. At any rate no such claim was before me and this same must be rejected.

Coming to his real grievance that he was entrusted with certain work and as such he was entitled to the benefit of Interim relief, which was given to the cadre of clerks under the Interim award of their lordships of the All India Industrial Tribunal (Bank Disputes), Bombay. In this respect also the question is rather problematic. In one sense he was entrusted with some clerical job relating to Cash Department which made him to claim the benefit of Interim award. But the hard fact remains that he was a Hundi Presenter and was given some extra work for some time for which he was paid and he cannot go as a matter of right into the cadre of clerks. The duties of the Hundi Presenter as explained by Shri Shukla himself in the course of his arguments are that he is not exactly a Peon but a dignified Peon in the cash department who deals with Hundis and presents them to the parties. Now it appears that the work of the Hundi Presenter requires more intelligence than that of an ordinary Peon who has only to perform the work of distribution of letters or attending to the needs of the officers; and the Bank availed his services to carry money to the Imperial Bank for the purpose of deposit and to count money also whenever it was required for which he was being paid. But when he arrogated on the basis of this extra work to have become a clerk, the Bank withdrew that work from him some 2½ years back. There is nothing on the record to show that he made any protest to the higher authorities of the Bank as to why that work was withdrawn from him. Subsequently he moved the Tribunal for implementing the Interim award in his case on the plea that he had been performing certain duties relating to Cash Department. In these circumstances, it is difficult to hold that he was promoted to the cadre of clerks and was entitled to the benefit of the Interim award. He may be capable of doing better work but his remedy lies with the Bank and not with the Tribunal to treat him as a clerk on the basis of work done by him two years back and to allow him the benefit of the Interim award. In the result the claim is not sustainable and is disallowed.

Reference No. 21 of 1950.

UNITED COMMERCIAL BANK LTD.

APPEARANCES: Shri P. R. Seshan, Deputy Chief Accountant, for the Bank.

None of the Giridih Branch employees.

A claim was filed on the 11th March 1950 by the employees of the Giridih Branch of the United Commercial Bank comprising of no less than three dozen items under various heads some of which are given as under:

- (1) Revision of pay scales,
- (2) Dearness Allowance,
- (3) House Rent Allowance,
- (4) Children Allowance,
- (5) Provident Fund,
- (6) Gratuity,
- (7) Guarantee fund,
- (8) Working hours,
- (9) Medical aid,
- (10) Revised rate of security deposit, etc.

No one, however, made his appearance in pursuance of the claim. Shri Seshan, the Bank representative, stated that it was just possible that the Employees Union people have deliberately avoided to attend inasmuch as the subject matter of the

claim has already been decided by the All India Industrial Tribunal (Bank Disputes) and moreover does not fall within the items mentioned in the Schedule II attached with the Reference No. L.R.2(273), dated 21st February 1950. This objection was also raised in the written statement and Shri Seshan maintained that the claims under various heads were not entertainable because the Tribunal has no jurisdiction over them under the Reference. In view of the fact that the application related to about three dozen claims, the Bank Employees Union representative was awaited in order to ascertain as to whether the claims had been withdrawn. Meanwhile a communication was received from the Secretary, United Commercial Bank Employees Union, Giridih, dated 12th March 1951 to the effect that the demands were made before the implementation of the All India Industrial Tribunal (Bank Disputes) award and since the award has now been enforced they would not press the application. The claim accordingly in the light of the communication needs no adjudication and the same is filed. It is, however, noted with regret that the Employees Union did not inform the Tribunal in time and the matter was left in suspense until the date of the hearing.

Reference No. 25 of 1950.

BANK OF BIHAR LTD.

APPEARANCES: Shri Bindeshwari Pd. Sinha, Advocate, with Shri R. N. Prasad, General Secretary, Bank of Behar Employees Association, Patna.

Shri Grijia Nandan Prasad, Advocate, with Shri M. P. Kapoor, Establishment In-charge for the Bank.

(1) **Jamuna Prasad.**—This claim was originally filed against the order of suspension, dated 21st January 1950 passed against the subject. The Bank, however, after having filed their written statement in reply to the claim made another application under Section 33 for the express permission of the Tribunal to dismiss Shri Jamuna Prasad. Notice was issued on this application on the 23rd May 1950 to the Vice-President, Bank of Bihar Employees Association, Patna, who pleaded inability in his letter, dated 26th May 1950 to file the written statement to the application and asked for the copies of the reports upon which reliance was placed by the Bank in order to secure permission for the termination of Shri Jamuna Prasad's services. The Bank, however, was not called upon to supply the copies and the matter was ordered to be taken up at the time of hearing by my learned predecessor. At the time of the hearing it was disclosed that Shri Jamuna Prasad had already been dismissed and the application under Section 33 has thus become infructuous. Shri G. N. Prasad, the learned Counsel for the Bank, explained that although permission was sought to dismiss Shri Jamuna Prasad yet his services were terminated on legal advice that such permission was not necessary under the circumstances of the case. It was suggested by him that under these circumstances the complaint of Shri Jamuna Prasad against the order of suspension may well now be taken up as against the order of dismissal and the Bank was prepared to meet the same. Shri Sinha, advocate on behalf of Jamuna Prasad asked for time to supplement the proceedings for the purpose of filing his complaint against the order of dismissal and the same was granted. The parties accordingly were directed to file the amended pleadings by 15th March 1951 and the case was taken up on the 17th for recording evidence—documentary or oral—and for arguments.

The material facts of Shri Jamuna Prasad's case may shortly be stated as follows: He joined the Bank's service in the first instance at Monghyr on the 19th September 1947 as probationer and was confirmed in April 1949 at Daltonganj Branch. He was, however, transferred to Jharla on the 22nd December 1949, where some charges were levelled against him by the Branch Manager and he was suspended on the 24th January 1950. The main charge as embodied in Exhibit A, dated 24th January 1950 was to the effect that Shri Jamuna Prasad had failed to write the Day Book on Saturday, the 21st January 1950 and left the office without information. He made a representation (Ex. B) to the General Manager on the same day wherein he explained his position and gave detailed reasons as to why the Day Book was not completed on that day. It was alleged on behalf of Shri Jamuna Prasad that his representation elicited no reply from the side of the General Manager nor any enquiry was made into the matter and some addition was made in the charges referring to some previous instances whereupon he submitted another explanation on the 6th February 1950. It was further alleged that no allowance was paid to him during the period of suspension. He made another representation to the General Manager, dated 2nd October 1950 to the effect that he was ill and was residing in a village for the change of climate and that money was required for his treatment and at least half of the pay be

paid to him upto July 1950 (Ex. 11) which also brought no reply and another representation, dated 11th November 1950 was sent (Ex. 12) to the same effect. The Bank authority instead of paying him his salary or any allowance for the period of suspension, terminated his services on the 2nd December 1950. It was argued on behalf of the applicant that the Bank during the suspension period had sought the permission of the All India Industrial Tribunal (Bank Disputes) to dismiss Shri Jamuna Prosad by their application, dated 22nd February 1950 and subsequently moved this Tribunal by their letter, dated 17th May 1950 and without awaiting for the sanction sought for; dismissed the employee on the 2nd December 1950 and thereby flagrantly violated the provisions of Section 33 of the Act. It was maintained that the order of dismissal was bad in law and the Bank rather acted in a highhanded manner in not having awaited the necessary permission applied for. The relief prayed for was for reinstatement as well as for the payment of dues for the intervening period including the period of suspension.

On the other hand the learned Counsel for the Bank, Shri G. N. Prosad, in the written statement as well as in his arguments referred to the previous conduct of the applicant relating to his work at Daltonganj and Jharia where he was suspended. Reliance was placed on reports wherein the applicant's work was stated to be unsatisfactory and he was reported against for grave dereliction of duties. In this connection specific reference was made to the report, dated 6th May 1950 by the Manager, Daltonganj Branch, (Exhibit 1) as well as (Exhibit 3) (Confidential report of Shri B. L. Chunder, Inspecting Officer, dated 31st July 1949) and Exhibit 6, dated 12th January 1949 (another report to the General Manager sent by the Branch Manager, Jharia regarding Shri Jamuna Prosad). Reliance was also placed on Exhibits 4, 5, 6, 7, 8 and 9 which related to the charge of non-completion of Day Book and leaving the office on Saturday. Shri Prosad arguing on behalf of the Bank contended that Shri Jamuna Prosad as borne out from the various reports of different Managers under whom he worked was inefficient and the Bank naturally had become sick of him and was obliged to suspend him in the first instance. The learned Counsel admitted that the management applied for permission to dismiss him because the Bank did not afford to continue him in service on account of his throughout unsatisfactory work and inefficiency but subsequently the Bank was advised that in his case such permission was not necessary in the eye of law and consequently dismissed him from service.

On the perusal of the documentary evidence brought on the record by both sides it is abundantly clear that Shri Jamuna Prosad was either very inefficient and did not satisfy his immediate officers under whom he worked or some how or other he was not in the good books of the Manager of Daltonganj. He was transferred to Jharia on the recommendation of the Manager which in view of its significance may be quoted from Exhibit 4 as follows:

"Strongly recommended. He may kindly be transferred to some other place. He is totally unfit for work on account of his bad health. Submitted for orders."

This gives an insight into the whole affair that the man was being driven from post to post as he was not working to the entire satisfaction of the Branch Managers on account of his ill health or owing to inefficiency which has been attributed to him by more than one Branch Managers under whom he worked. Reference was also made to another incident which is embodied in Exhibit 1, dated 6th May 1949 and relates to an accusation that Shri Jamuna Prosad had deliberately abstained to inform the consignee of a parcel of Penicillin in order to benefit his brother who was a Compounder and was also dealing in Penicillin. This incident however, did not form the subject of the charge upon which he was suspended and he was only transferred to Jharia. This clearly shows that although this charge was of rather serious nature but no action was taken and the parcel was ultimately delivered to the consignee. The punishment if any, however, was given by way of transfer. This charge accordingly was not entered in the charge sheet upon which he was suspended; and as borne out from Exhibit A (the charge Memo.) the suspension order was based on the sole allegation that he had not written the Day Book on Saturday, the 21st January 1950. This charge was met by Shri Jamuna Prosad in his explanation (Ex. B), dated 24th January 1950. It was supported also by Shri K. B. Lal in his letter, dated 18th February 1950 (Ex. C) from which a paragraph under the heading "Real Cause" in Exhibit C is hereby reproduced for facility of reference:

EX. C. "The charge of not writing the General Day Book cannot be laid on the Day Book writing as both the General Day Books on 21st January 1950 were not available to Shri Jamuna Prosad till 6-30 P.M. due to the fact that they were engaged for checking by the Manager and the

then Accountant. As a matter of fact his transfer to Jharia Office was not requisitioned by this Branch and so the Manager in order to remove him from this place took advantage of this situation."

This clearly shows that the Manager was rather at pains to enlist the support of Shri Kailash Behari Lal and Brij Behari by asking them to give in writing as to what happened on Saturday, the 21st January 1950 when Shri Jamuna Prosad left the office without completing the Day Book. These statements Exhibits 8 and 9 are therefore to be received with caution because the one stands contradicted by Shri K. B. Lal's letter to the Hon'ble the Minister of Labour (Ex. C) and the other also be-speaks that Shri Jamuna Prosad was in the office till 7 P.M. All these facts amply go to show that he was working till late and it was just possible that the Day Book was not completed as all vouchers were not available or that the Day Book was generally completed on the following day according to the practice as claimed by the applicant in his explanation. At any rate I am not satisfied that the Bank management was justified in terminating the services of Shri Jamuna Prosad on this one plea that he did not complete his Day Book on the 21st January 1950. It is a different matter that the Management may have become sick of the man on account of his inefficiency or unsatisfactory work owing to his bad health but no case for dismissal was made out on merits and even if he was to be pulled up some other punishment should have been meted to him by way of withholding his promotion or change of duty etc. The case of the Bank furthermore suffers from another ground viz. that the prior permission of the Tribunal was not obtained and although it was sought for yet the dismissal was precipitated.

Shri Jamuna Prosad also asked for the payment of allowance for the period of suspension, and in this connection relied upon the directions given on page 140 of the All India Industrial Tribunal (Bank Disputes) award wherein it has been held that an employee under suspension should not be deprived wholly of his pay and allowances and that "an employee shall be entitled for the period of his suspension to a subsistence allowance at such rate as the suspending authority may direct but not less than 1/3rd of the pay and allowances which he would but for the suspension have drawn". The suspension in the first instance and ultimate dismissal of Shri Jamuna Prosad has occasioned to my mind owing to the adverse remarks of the manager under whom he worked against him and the higher authorities appear not to have stood in their way and rather failed to see the real position that the prior permission of the Tribunal was necessary and furthermore that the merits of the case did not warrant such a drastic action as to invoke the penalty of dismissal. I have therefore no hesitation in setting aside the dismissal of Shri Jamuna Prosad and allowing his reinstatement. The Bank is directed to take him back in the service within one month from the date when the award becomes operative. He will also be entitled to the payment of all the salary and allowances permissible for the intervening period from the date of his dismissal to the date of reinstatement as well as 1/3rd salary for the period of his suspension. Awarded accordingly.

(2) **Nageshwar Kishun Lal:** He was appointed on the 23rd September 1949 on probation for 6 months and his services were terminated on the 18th February 1950. His grievance is that he had applied for the implementation of the Interim award of the All India Industrial Tribunal (Bank Disputes), in his case but the Bank did not like that move and dispensed with his services on the charge of inefficiency. It was claimed that his was a case of victimization. It was further argued that he was not afforded any opportunity to explain in regard to the charge of inefficiency levelled against him and that the prior permission of the Tribunal was not obtained under Section 33 of the Industrial Disputes Act and as such the order of dismissal was bad in law. The Bank representative in reply averred that he was a probationary hand and it was for the Bank to decide as to whether he could be confirmed or not. Reliance was placed on the letter of appointment wherein it was specifically mentioned that his services would be terminable during the probationary period without giving him any notice. It was further argued that in the case of temporary hand permission under Section 33 was not necessary and that his services were terminated within the period of six months as he was not found fit for the job.

The applicant was admittedly on probation and in the light of the letter of appointment I do not see how the applicant could claim confirmation so long the employer was not satisfied with his work. There is no substance in the application and the same is disallowed.

(3) **Deo Narain Singh:** He joined the Bank's service as a Godown Peon and was an old employee. He was however dismissed on the alleged shortage of goods in Behia godown. He was neither charge-sheeted nor any opportunity was given to

him to explain. The relief sought for was for reinstatement and the payment of salary for the intervening period.

Shri G. N. Prasad, on behalf of the Bank, replied that it was not correct to say that Shri D. N. Singh had put in 37 years service. He was appointed as Jemadar on the 1st October 1941 and subsequently made Godown Peon. In 1946 he was found connected with the shortage of goods in the godown of Katlu Shah which was under his charge and on the report of the local Director his services were terminated on the 26th May 1946. He was however reinstated on the 21st August 1946 but sometime after some shortage was again found in the godown of one Ram Narain Ram and Shri Deo Narain Singh was suspected for that shortage. An enquiry was made into the matter and on the report of the Manager one of the Directors of the Central Board made further enquiries in order to satisfy himself and he also agreed with the findings of the local Manager. Reliance was placed on this report dated 26th June 1949 (Ex. 1), and it was maintained that although regular charge sheet was not given to him but due and proper enquiries were made by the Director and the applicant was found guilty.

The case as disclosed by the facts given above is one of misconduct and the point for determination is as to whether the charge has been brought home to the applicant or not. This is correct, as admitted by the Bank representative, that no formal charge sheet was given to the applicant but due and proper enquiry appears to have been made as borne out by (Ex. 1). It is also in evidence that the enquiry in the first instance was made by the Manager and the Bank authority furthermore requisitioned the services of one of their Directors to go into the matter and on his report came to the conclusion of terminating the services of the applicant. In these circumstances I think it would be going too far to substitute my judgment as against the conclusions arrived at after due enquiry. The right of the employer under certain circumstances in the case of misconduct, if no miscarriage was occasioned, cannot be denied. In consideration of all these facts and circumstances I am of the opinion that this case does not warrant any interference and the same is disallowed.

(4) **Jogeshwar Jha:** His case is that he was working at Jharia office and completed one year's service but still he was not confirmed and his services were terminated on the 1st November 1949 on the plea that he was rude and had misbehaved in the course of his probationary service. The Employees Association, representative on his behalf denied the allegation that Shri Jha was rude towards the Manager in any way and stated that the Manager had rather become inimical towards him on account of some domestic quarrel on the distribution of sugar in the Mohalla. Reference was made to the representation made by the Secretary of the Association in this connection (Ex. A).

On perusal of the record I see that there is not sufficient data on the record to establish the charge of misconduct against the applicant as alleged by the Bank representative who did not care to produce any evidence to show as to what words were used by the employee towards the Manager which could amount to misconduct, minor or major, to warrant his dismissal and contended only that the applicant was a temporary hand and was not yet confirmed and as such the Bank was within its rights to discharge him when he was found undesirable. Now it was not urged on behalf of the employee that his confirmation was due and the same was withheld arbitrarily, nor any argument was advanced that he was not a temporary hand and should have been considered as a confirmed employee after putting more than 6 months service. I am therefore constrained to come to the conclusion that no case has been made out for setting aside the order of discharge and to allow reinstatement. The application fails and stands dismissed.

(5) **Bindeshwari Prasad:** He joined as Poddar in 1948 at Patna City branch. Agency at Patna was abolished on the 31st December 1948 and his services were retained by the Manager and he was allowed to continue as Poddar, and a fresh appointment letter was given to him. His services were however terminated on the 8th January 1950 on the confidential report of the Manager (Ex. B). It was argued on his behalf that the order of dismissal was untenable inasmuch as no charge sheet was given to him nor any opportunity was afforded to explain before terminating his services.

In reply the Bank representative argued that after the termination of the Agency the applicant had become a new entrant and in this connection reliance was placed on his original application, dated 14th January 1949 (Ex. 2). It was further argued that by virtue of his fresh appointment letter the applicant had not only to act as Poddar but had to act as Assistant Cashier and as he was found incompetent for that work, the Bank was constrained to terminate his services.

On the perusal of Exhibit 3—confidential report—of the Manager which forms the basis of the dismissal order, I find that in the columns of conduct, attendance,

etc., the remarks given are one of good and regular respectively and under the column of application to work' it was also mentioned that he was painstaking. It was however noted in this report that he could simply count notes and was not able to write Cash Book and that he can work as Poddar only.

Now the designation of the applicant on the record at the time of the termination of his services was of Poddar and the report itself does not find him incompetent for that work. I am therefore of the opinion that he was discharged on flimsy ground. The report furthermore was a confidential one and the employee was not given any opportunity to the alleged charge of inefficiency and as such was denied the basic right of meeting the allegation or charge if any against him. In the result the order was bad in law and must be set aside. I would therefore allow his reinstatement and direct the Bank to take him back within one month from the date when the award becomes operative as Poddar. He will also be entitled to 6 months salary and allowances permissible under rules prior to the date of his reinstatement.

(6) Stoppage of Increment:

(a) Arrah: Under this Branch 12 claims in the name of—

- (1) Gopal Chand Jain,
- (2) Baleshwar Rai,
- (3) Jamun Mahto,
- (4) Parmeshwar Rai,
- (5) Dina Nath,
- (6) Sei Prasad,
- (7) Ramgati,
- (8) Bikram Singh,
- (9) Butan Prasad,
- (10) Sita Ram,
- (11) Kamla Singh,
- (12) Parika Ram,

were preferred. The recognised representative of the Employees Association however did not press these claims and stated that the increments which were withheld have since been released and no adjudication was needed. The application is accordingly filed as withdrawn.

(b) Bihar Sharif: From this branch only one claim in the name of Devi Sahay was made. The same was also not pressed.

(c) Chapra: Similarly in this Branch only one claim in the name of Shri Kanhaya Lal was preferred. The same was not pressed.

(d) Jamalpur: Claim in the name of Shri Jaldeo Tewari, Cashier, was filed but it was not pressed.

(e) Jharia: Two claims in the name of Deonath Sinha and K B Lal were preferred. Both were not pressed.

(f) Monghyr: Under this branch four claims in the name of (1) Akilleshwar Prasad, (2) Govind Prasad, (3) Lakshman Prasad and (4) Ram Chandra Prasad were preferred by the Employees Union but the Union representative did not press as the increments have been released by this time. The same are filed as withdrawn.

(g) Muzaffarpur: Under this Branch 7 claims viz. (1) Haridwar Pandey, (2) Bankey Behari Pd. Agarwal, (3) Badri Narayan Agrawal, (4) Rajendra Chaubey, (5) Madan Mohan Pd., (6) Ram Benoy Singh and (7) Dhrub Prasad were filed through the Employees Association but the Union Representative did not choose to press these claims and withdrew the same.

(h) Siwan: Under this Branch one claim only in the name of Rameshwar Prasad was filed and the same was not pressed.

(i) Motihari: Only two claims in the name of Parmeshwar Pandey and Rameshwar Pd. Agrawal were preferred but the same were not pressed.

(j) Patna: Under this Branch 13 claims in the names of (1) Ram Ch. Pd., (2) Durga Prosad, (3) Karuna Kumar Sinha, (4) Pandey Uma Prosad, (5) Jagbir Ram, (6) Deonarain Gope, (7) Bhagera Lal, (8) Raghubans Dwivedi, (9) L N Chaubey, (10) Gulab Ram, (11) Ram Autar, (12) Sita Ram and (13) Bishwa Nath Singh were actually preferred but the Employees Union representative Shri R. N. Prasad stated that he was not pressing all these claims except the claim of Durga Prosad.

The above mentioned claims referred to in (b) to (j) are accordingly filed having been withdrawn.

(7) **Durga Prosad:** He was appointed as an Assistant on the 22nd December 1944 and has been still continuing as such. His increment fell due in August 1949 and the same was not granted to him. The Employees Union representative urged that the increment was withheld unjustifiably and the same may be released. The Bank representative in reply relied upon the confidential report brought on the record and argued that there was some shortage in the godown at Behia of which he was in charge but he failed to bring to the notice of the Manager about that shortage. Subsequently on checking of the godown some shortage was found and the applicant was suspected not to have reported the matter deliberately. It was also argued that this case relates to the same incident in which Shri Deo Narain Singh, whose case has been dealt with in this award was involved.

The only question for determination is as to whether Shri Durga Prosad was in any way connected with the shortage. It is in evidence that an earlier report was made on the 2nd January 1949 to the effect that everything was in order but subsequently after 3 months it was reported that some shortage was detected and Shri Durga Prosad was held liable for that. In the absence of any direct proof that during the period after the first report of July 1949 Shri Durga Prosad was found connected and with the shortage on due enquiry I do not think that the Bank was justified to hold him responsible for that shortage. The other plea that this case also relates to the same incident in which Shri D. N. Singh was involved is also of no avail to the Bank inasmuch as Shri D. N. Singh was discharged from service on this very plea and in case Shri Durga Prosad was also connected with the same action he too should have been called upon to explain. The Director who conducted enquiry against Shri D. N. Singh does not say anything in his report against the applicant. In the circumstances, no case was made out to withhold his increment which fell due to him; and I would therefore, direct the Bank to release the increment with retrospective effect within one month from the date when this award becomes effective.

(8) **Demotion of Nand Kishore Lal:** This claim was not pressed and needs no adjudication.

(9) **Transfer for harassment of:** (a) Dwarka Sharma and (b) Karuna Kumar Sinha: These two claims were not pressed by the representative of the Employees Union and need no adjudication.

(10) **Attendance Bonus:** In this case a preliminary objection was raised by the Bank's side that the matter formulated in the claim does not fall within the category of the items mentioned in Schedule II attached with the Notification and furthermore no specific claims in regard to individual employees were made and the application is not triable by this Tribunal.

Shri Sinha, on behalf of the Employees Union, however, pressed the claim for bonus only and submitted that the question of bonus should have been considered by the management according to their own circular. Shri Sinha however did not produce the copy of the circular nor adduce any other evidence. The Employees Union furthermore failed to furnish the list of the employees affected, and this sort of omnibus claim embracing complaints of various kinds cannot be entertained due to the vagueness of the claim. The questions raised in the application including one of Bonus pressed by Shri Sinha moreover are outside the scope of the reference which deals with specific items as mentioned in Schedule II of the reference and as such are not triable by this Tribunal. In the result, the application fails and the same is rejected.

(11) **Implementation of All India Industrial Tribunal (Bank Disputes), Bombay, Interim Award:** The Bank has stated in the written statement that the Interim award of the All India Industrial Tribunal (Bank Disputes) award has been duly implemented in terms of the award.

Shri Sinha, on behalf of the Employees Association, however, controverted the averment and stated that the implementation was not made in all its implications. Shri Prasad, on behalf of the Bank drew my attention to para. 3 of the written statement in this connection viz. that the Bank was prepared to investigate the position if any specific instance was cited of non-compliance in regard to the implementation; and argued that in terms of the Interim award of 17th October 1949 the amount of the Interim Relief to be given under para. 3 of the award was to be paid by computing a minimum total of Rs. 82 by way of pay and D.A. and this difference has been paid to all the employees and no one has been paid less than Rs. 82 or less than what he was getting at that time.

The Employees Union representative in further reply stated that this was correct that the total amount of Dearness Allowance and the pay under the Interim Relief were paid but the basic pay was not increased. Reliance was placed on para. I of the Interim award dated 17th November 1949 and Shri Sinha in support of his argument exemplified by an instance *viz.* that an employee whose basic pay was Rs. 40 and Dearness Allowance Rs. 30 was allowed Rs. 12 being added to bring to Rs. 82 without increasing the basic pay and thus the Interim award was not implemented. The Counsel however did not cite any instance in which increase was not made all told. The Interim award deals with certain increase for intervening period and the question of the raising of basic pay or its fixation is beside the point. The claim is accordingly disallowed.

(12) **B. L. Chowdhury:** The record reveals that this application was addressed to the Employees Association and a copy was sent to the Tribunal. This copy should normally have been filed in the office but it appears that notice was issued and the Bank also filed their reply. Shri Chowdhury did not turn up and Shri Sinha, the learned Counsel for the Employees Association did not press the claim. The resignation moreover relates to a dispute which occurred in 1947 much earlier to 13th June 1949 and is thus beyond the scope of the reference. The application is accordingly filed.

Reference No. 32 of 1950

BHARAT BANK LTD.

APPEARANCES: Shri Kishun Prasad in person.

Shri R. P. Shukla, General Secretary, Bihar Bharat Bank Employees Union, Patna.

Shri R. N. Rastogi, Superintendent, for the Bank.

(1) **Fixation of Working Hours and Payment of Over-Time:** Shri R. P. Shukla, General Secretary of the Employees Union did not press this demand and the same needs no adjudication, having been withdrawn.

(2) **Stoppage of Annual Increments in different Branches:** Shri Shukla stated that increments have since been released and as such the demand needs no adjudication. The application is accordingly filed.

(3) **Madan Mohan Prasad:** He joined the Bank's service on the 25th September 1948 as a Godown-keeper *cum* clerk and his services, were abruptly terminated on the 30th December 1949 on the plea that he had become surplus to the requirement of the Bank. It was argued on his behalf that the post was still there and that it was wrong to say that he had become surplus to the requirement. The next contention raised was that the express permission of the Tribunal was not obtained under Section 33 before terminating his services and the order was bad in law. Shri Shukla on behalf of the subject also pressed the other part of the claim *viz.* that the applicant was not granted the benefit of the Interim award although he was working in the clerical cadre.

Shri Rastogi, the Bank representative, in reply submitted that Shri Mohan Prasad joined the Bank's service as a probationer and was a temporary hand at the time of his discharge from service. Replying to the contention that the work which he was doing was still continuing, it was argued that a permanent man from Ranchi was transferred to his place and Shri Madan Mohan Prasad who was a temporary hand was discharged and in these circumstances the applicant had become surplus to the requirements of the Bank. It was further argued that his discharge from service was not traceable to any bad labour practice and was the result of administrative exigencies of the situation. Replying to the other part of the claim Shri Rastogi averred that Interim relief has already been released in his case and it needs no adjudication. Shri Shukla in further reply contended that the plea of the Bank of his being a temporary hand was not tenable inasmuch as the applicant had served the Bank for more than a year and under the directions of the All India Industrial Tribunal (Bank Disputes), Bombay, given in their award under Article 314 the period of probation should not have exceeded beyond 9 months in all for the purpose of confirmation. It was further argued that under these directions it was also necessary to issue written order at the time of appointment and the same was not complied with.

The last argument advanced on behalf of the subject is not without force but the hard fact remains that Shri Madan Mohan Prasad was not confirmed and it was open to him to have asked for confirmation after 9 months before the termination of his services. It may be a hard case but the applicant was admittedly a temporary hand and was replaced by a permanent man imported from Ranchi and

I do not think that any interference is called for in the case of a temporary man with the result that the claim is disallowed. 1190

(4) **B. Banerjee:**

(5) **Jagannath Ram:** These two claims were not pressed by the Employees Union representative and it was stated that the employees concerned have since been re-employed. The claims are filed.

(6) **Brij Behari Pandey:** He was appointed as a Hundi Presenter at Bhagalpur Branch on the 22nd November 1948 and continued to work as such till 9th December 1949. His services, however, were terminated without assigning any reason and his grievance was that no express permission of the Tribunal was obtained and the order was bad in law. In another application filed by him in his individual capacity it was also claimed that the benefit of the Interim award was not granted to him in the course of his service to which he was entitled from 1st June 1949 up to the date of the termination of his service.

Shri Rastogi, Bank representative, in reply submitted that the applicant was working as Hundi Presenter but on the review of working at Bhagalpur Branch this post was abolished and the Bank was constrained to dispense with his services on payment of one month's salary in lieu of notice. Shri Rastogi further averred that sometime after in October 1950 he was taken back into the Bank's service as a new hand and has since been working in the Bank and as such the question of his reinstatement does not arise. Replying to the other demand viz. Interim Relief, it was argued that the applicant was not entitled to that relief inasmuch as he was getting more than what he should have got under the Interim award. Shri Shukla repudiating the argument of Shri Rastogi argued that no doubt Shri Pandey was taken back in the Bank's service but he was not given the same post i.e. of Hundi Presenter and was only appointed as a Cash Mazdoor and as such his grievance was still there for the purpose of reinstatement as Hundi Presenter. The Bank representative, however, produced the letter of appointment, dated 30th October 1950 (Ex. 2) which shows that he was re-appointed as a Hundi Presenter and not as a Cash Mazdoor. This furnishes a complete answer to the contention of Shri Shukla and it appears that the Employees Union representative was not posted with full facts as borne out from the Bank's record. The claim fails and is disallowed.

(7) **R. P. Varma:**

(8) **M. M. Sahay:**

(9) **Jadu Ram:** Shri Shukla, General Secretary, Bihar Bharat Bank Employees Union, Patna, did not press these claims and the same will be deemed to have been withdrawn.

(10) **J. K. Tiwari:** The claim was not pressed and the same is filed.

(11) **Withdrawal of Power of Attorney of Shri R. P. Shukla:** This claim was also not pressed and the same is filed.

(12) **Provision of Hired Quarters to Staff:** Not pressed.

(13) **T. P. Mohendra:** The Bank representative raised a preliminary objection that the case had already been heard by the All India Industrial Tribunal (Bank Disputes), Bombay and the claim was not entertainable. Shri Shukla in view of the objection did not press the claim and the same was filed.

(14) **Staff of Daltonganj Branch, Daltonganj:** Regarding stoppage of annual increment of:

(1) Mathura Parsad

(2) K. N. Pandey.

(3) V. N. Singh.

(4) J. Parsad.

(5) R. Dubey.

(6) M. Ram and two others.

The claims were not pressed on the assurance of the Bank representative that the increments have already been released. The application is accordingly filed.

(15) **Stoppage of Increment of Monghyr Branch Staff:** This application was preferred by the Branch Secretary, Bharat Bank Employees Union, Monghyr, on behalf of the staff in General regarding the stoppage of increment. On the assurance by the Bank representative that the increments have since been released, the application was not pressed. The same is filed.

(16) **Kishun Prasad:** This employee was working at Muzaffarpur Branch and applied for leave on the 23rd February 1949 on the plea of illness. On the expiry of the leave when he joined his duty he was informed that he could not resume his work as he had absented himself from duty and the matter was reported to the Head Office. The applicant thereupon made a representation to the Manager, Bharat Bank, Muzaffarpur on the 20th May 1949 (Ex. A) and received a reply dated 18th June 1949 (Ex. B) whereby he was informed that he should consider himself having been relieved from the service of the Bank since 23rd February 1949 as the treasurer had already engaged a substitute in his place.

The Bank representative in reply submitted that Shri Kishun Prasad absented himself on the 23rd February 1949 without obtaining any leave and as the matter was reported to the Head Office he was not allowed to resume his work; when he came back after the expiry of the alleged leave. It was further alleged on behalf of the Bank that Shri Kishun Prasad was suspected of a fraud case in connection with the Draft of Rs. 10,000 alleged to have been prepared by the applicant when he was working as Cashier without having received any money in the name of one Behari Lal of Patna and the amount of Rs. 10,000 was actually withdrawn on the foot of that Draft. It was further stated that when the Patna Branch informed Muzaffarpur branch for debiting the amount the matter came to light that even the voucher was not in existence and that a fraud had been perpetrated on the Bank. Shri Rastogi argued that Shri Kishun Prasad had absented himself from his duty on the 23rd February 1949 as he had become aware that the said fraud had come to light. The Bank representative further stated that the matter was reported to the Police and the same was under investigation. On the strength of the aforesaid allegations the Bank representative concluded that the Bank could not afford to retain him in service when he was suspected of fraud and had absented himself soon after when the fraud came into light and his services were terminated. Reference was made to the case of one B. N. Jha who was also accused in connection with the forged Draft and whose case was decided by the All India Industrial Tribunal (Bank Disputes), Bombay (published in the Gazette of India, dated 11th August 1950—page 442). Shri Rastogi finally argued that his post has already been filled up by the Treasurer and that no case for reinstatement was made out by the applicant.

Shri Shukla in reply explained the procedure in substance from which one has to go into the preparation of a Draft of any Branch and maintained that regard being had to the procedure laid down for the preparation of the Draft and payment thereafter, Kishun Prasad did not come into the picture at all when no money had been deposited with the Cashier for securing the Draft.

Now the point for determination mainly is as to whether Shri Kishun Prasad was in any way connected with the alleged fraud. As alleged by the Bank representative, the matter was reported to the Police but Shri Kishun Prasad was not sent up by the Police in this connection and presumably no action was taken against him. The Bank admittedly did not make any enquiry into the matter on the Departmental side and the services of the applicant were terminated without giving him any charge sheet much less any opportunity to explain if any charge was actually levelled against him. His services were terminated on the plea that he had absented himself from duty on the 23rd February 1949.

On the perusal of the records it seems clear to me that on the 23rd February 1949 when Shri Kishun Prasad went on leave according to his allegation or absented himself without obtaining leave according to the Bank's allegation, he was not allowed to resume his duty when he joined his post after some days as borne out from Bank's letter, dated 3rd March 1949 sent to him under the signature of one Dli Bahadur, Manager, filed with the claim and he was replaced by another man by the Treasurer.

Now the Draft in respect of which Shri Prasad is alleged to have been suspected of the fraud is admittedly dated 3rd November 1949 and by that time Shri Prasad had already been relieved from his duty. It appears that no proper order was passed in terminating his services and the matter was left only to the Treasurer to take him back or not on duty. Exhibit A in this respect gives an insight into the conduct of the Bank authority and the relevant portion is quoted as under in order to appreciate the discussion:

Ex.A. "As sufficiently long time has past and I am sitting idle without getting any salary from you for months together, I have to request you kindly to take a decision whether my services are desired to be retained by the Bank or not, so that I could act as advised.

It may not be out of place to mention that since the Bank has not dispensed with my services so far and there is not even a semblance of

a charge against me the Bank ought to pay my salary for all the period from—till such time that I am officially informed that my services are no longer required.

In the meantime I have to request you kindly to pay up the arrears of my salary till date, for this I shall be very much grateful."

Yours faithfully,

20th May, 1949.

The reply which was sent on this representation of the applicant is Exhibit B which again may well be reproduced in order to have the full view of the Matter:

Ex. B. Bharat Bank Limited, Head Office: Delhi/Darbhanga, Muzaffarpur.

No. MUZ/61

Dated 18-6-1949.

Shri Kishun Prasad,
Jail Road,
Muzaffarpur.

Dear Sir,

With reference to your letter dated 20th May 1949 addressed to us and copy of which we understand has been forwarded by you to our Head Office at Delhi, we have already informed you personally long ago and now again confirm in writing that you should consider yourself to have been relieved from service of the Bank from the date you absented yourself from duty i.e., from 23rd February 1949, since the treasurer had provided substitute in your place.

Please further note that you were in the service of the Bank as a nominee of the treasurer, Shri Surendra Prasad, Advocate, Darbhanga with whom you should correspond in future if necessary and also note that no further correspondence from you will be entertained by the Bank.

Yours faithfully,
(Sd.)

Manager.

This document clearly indicates that upto 18th June 1949 no reference was made to the alleged fraud much less the applicant had been suspected of having been a party to the alleged fraud for the preparation of bogus Draft. The record further reveals that it was only in the written statement filed by the Bank dated 9th May 1950 that a reference was made to this bogus Draft and the suspected complicity of Shri Kishun Prasad in that fraud case. All these facts and circumstances mentioned above lead to the only conclusion that Shri Kishun Prasad's services were not dispensed with on the plea of misconduct but on the grounds that he absented himself on 23rd February 1949 from duty without having obtained leave, and subsequently when some fraud came into light this plea was also added into the written statement in order to justify his discharge from service. No enquiry was ever made against him nor he was charge-sheeted or given opportunity for explanation as said above and it is not at all established on the record as to whether he was actually reported against in the first information report lodged with the Police and in these circumstances the plea of the Bank viz. his suspected complicity with the fraud case is wholly untenable. It appears that the Treasurer wanted to replace him and his absence was availed of in order to shunt him off from the service. The original reason that he absented again is not supported by any evidence. The applicant's allegation is that he had colic pain and he applied for leave and the Bank only contented to deny the allegation without referring to the record as to whether any application was given or not. The order of discharge dated 18th June 1949 (Ex. B) furthermore 'as quoted above is confined to the only plea that he had absented himself and since the Treasurer had provided a substitute in his place he should consider himself to have been relieved from the service of the Bank from 23rd February 1949. This clinches the matter beyond any manner of doubt that the other plea of fraud was an afterthought. For all these reasons I am of the considered opinion that the Bank rather treated shabbily in dispensing with the services of one of their permanent employee as Shri Kishun Prasad was and it is a fit case in which reinstatement should be ordered. In the result I would direct the Bank to take him back into their service and pay him all the emoluments attached with his post from the date of his discharge to the date of his reinstatement within one month from the date when the award becomes operative.

(17) Application filed by the Secretary, Bihar Bharat Bank Employees Association, Muzaffarpur. Re: Stoppage of increment etc.

(1) K. K. Sinha.

(2) R. K. Jha.

- (3) Debi Mahto.
- (4) Mahesh Mahto.
- (5) Ram Dheyman.
- (6) Bishun Kumar Bhatnagar.
- (7) Bhola Ram.

The demand was not pressed, and the application is filed having been withdrawn.

(18) Application filed by the President, Bharat Bank Employees Union, Bhagalpur, Re: Stoppage of increment of:

- (1) Nagarmal Sharma.
- (2) Satya Narain Sharma.
- (3) Mahabir Singh.
- (4) J. M. Chowdhury.
- (5) P. K. Sarkar.
- (6) Hari Dayal.
- (7) Mahadeo Lal.
- (8) Manohar Lal.
- (9) Jamuna Prasad Varma.
- (10) Bhusan Pandey.
- (11) Sheopujan Dubey.
- (12) Nripendra Ch. Ghosh.
- (13) Lallan Oja.
- (14) Jharu Mandal.

Shri Shukla stated that increments in the case of the above-named employees have already been released and the demand needs no adjudication. The application is filed.

(19) Application filed by the President, Bharat Bank Jharia Employees Union, Jharia: Re: Stoppage of increment of:

- (1) S. N. Sharma.
- (2) G. K. Khanna.
- (3) S. N. Biswas.
- (4) Umesh Prasad.
- (5) Ramji Kewat.

Shri Shukla stated that the increments of the above employees have already been released and the demand needs no adjudication. The application is accordingly filed.

(20) Application filed by the President, Bihar Bharat Bank Employees Union, Gaya Unit, Gaya: Re: (1) Stoppage of annual increment,

(2) Reduction of staff.

(3) Retrenchment and grant of interim relief to Madan Mohan Prasad.

The claims (1) and (2) regarding stoppage of annual increment and reduction of staff were not pressed and the third claim i.e., Re: Madan Mohan Prasad has already been discussed in this award. The application is accordingly filed.

(21) **Anirooddha Prasad.**—Shri Shukla, General Secretary, Bihar Bharat Bank Employees Union, Patna, who appeared on his behalf stated the facts as follows: The applicant joined the Bank's service on the 2nd June 1945 and was working as a Senior Clerk. He was recommended for the grant of Power of Attorney and also given special increment of Rs. 10 in April 1948 in recognition of his honest work and efficiency. But he happened to become the Secretary of the Provincial Employees Union and owing to his activities incurred the displeasure of the Manager and his services were terminated on the 4th June 1950 on the ground that he had become surplus to the requirements of the Bank. It was urged that as the management had dispensed with his services on account of his Trade Union activities his was a case of victimization.

Shri Rastogi on behalf of the Bank submitted that his services were terminated as a result of the closure of Chapra Branch and that he could not be absorbed for

want of any vacancy. It was further argued that no one was appointed in his place and it was not correct to say that he was victimized on account of his Trade Union activities. It was next urged that it was purely a case of retrenchment and the Bank had no intention to victimize him and that the management was not at all aware of his Trade Union Activities.

In reply Shri Shukla emphasised on four points: (1) That the Bank had agreed before the Labour Commissioner that all the retrenched employes of the Chapra Branch will be absorbed and the Bank has failed to abide by that agreement.

(2) That Shri Anirooddha Prasad was only singled out and discharged from service although there were three more clerks and one Manager working in the Branch and to all intents and purposes he was victimized on account of his Trade Union activities.

(3) That he was a senior clerk and the principle 'last come first go' was not applied in his case. In this connection the instance of one Ram Kishun Prasad was cited who was retained notwithstanding of the fact that he was junior to Shri Anirooddha Prasad and joined his post after expiry of the leave on the eve of the closure of the branch.

(4) That he was entitled to compensation by way of payment of the salary and allowances permissible under the rule.

Shri Rastogi in reply to the point raised with regard to the undertaking urged that some agreement was entered into but the words used therein speak otherwise and referred to the operative portion which is quoted as under:

"It was found that it was not possible to run the Branch but the management agreed to accommodate the employees as and when the vacancies would arise."

It was also asserted that the local Manager of Patna branch agreed at the time of the retention of the services of Chapra Branch employees that two out of the three be retained.

Now the sole question for determination in this case is as to whether Shri Anirooddha Prasad who happened to be the Secretary of the Employees Association was to be absorbed under the terms of the agreement arrived at between the Bank representative and the General Secretary, Bihar Bharat Bank Employees Union before the Chief Labour Commissioner. This agreement was placed on the record and is dated 13th May 1950. In this it was admitted by the Employees Union that it was not possible to run the branches including Chapra branch but the management only agreed to accommodate the employees as and when vacancies would arise. It was further agreed that a list of retrenched hands shall be maintained and no fresh appointment will be made until the entire list is exhausted. In the terms of this agreement consequently neither the question of closure of the Chapra Branch can be agitated nor the question of the reinstatement of the retrenched employees can be considered and the question boils down to this only as to whether Shri Anirooddha Prasad could be absorbed anywhere else. This aspect of the case was not substantially brought in evidence to prove that any vacancy had arisen and he was not absorbed. The Bank representative furthermore stated that the local Manager of Patna agreed at the retention of the services of the Chapra Branch employees that two out of three be retained and in this arrangement Shri Anirooddha Prasad's services were terminated. This assertion was not denied in any form by the other side and it appears that 2 out of 3 were retained and the services of Shri Anirooddha Prasad's were dispensed with. It is just possible that the management might have singled him out as he was actively connected with the Trade Union activities. But in the light of the circumstances mentioned above no case of bad labour practice has been made out against the Bank and the matter was settled by an agreement before the Chief Labour Commissioner. In such circumstances his claim must fail for reinstatement.

In some other cases of retrenchment of employees on the closure of some of the branches of Bharat Bank I have invariably allowed retrenchment relief to the retrenched employees at the rate of half month's salary plus allowances for each completed year of service but I am afraid in this case this again cannot be allowed for the simple reason that the services of these retrenched persons were terminated on the basis of certain agreement and their cases are to be determined within the surview of that agreement. The result is that the claim fails and is disallowed.

1143
(22) **Closure of Chapra Branch.**—Shri Shukla did not press this demand and has frankly stated that in view of the changed circumstances his Union does not wish to press the claim.

(23) **Application under Section 33-A of the Industrial Disputes Act,** by the General Secretary, Bihar Bharat Bank Employees Union, Patna, regarding re-trenchment in Patna City and Gaya Branches, etc.

Shri Shukla stated that in view of the changed circumstances, his Union does not consider it necessary to press this application also and the same be deemed to have been withdrawn.

Reference No. 42 of 1950

HINDUSTAN COMMERCIAL BANK LTD.

APPEARANCES: Shri K. N. Bhatnagar, Establishment Superintendent, for the Bank.

None for the applicant.

Ashrafi Lal Mandal.—The applicant did not turn up even on the 20th March the last day of the hearing at Patna. Shri K. N. Bhatnagar, Bank representative, was asked to state facts both ways:

Shri Bhatnagar stated that Shri A. L. Mandal was appointed in the Bank's service for looking after the stocks and taking into custody the stocks pledged to the Bank by the borrowers and to effect delivery when necessary and his salary was recoverable from the borrower concerned. It was alleged that according to the practice in this Bank the services of the Godown keeper depend on the number of godowns, and the borrowers business dealings with a branch. It so happened, Shri Bhatnagar proceeded that the position of stocks pledged to the Bank at Bhagalpur Branch was reviewed and it was found that there was not enough godown work at the Branch and consequently the borrowers were not prepared to pay the salary in full of Shri Mandal who was working as Godown-keeper. The Bank consequently was constrained to dispense with his services with effect from 31st August 1949. It was argued further that in the case of Godown-keepers no letter of appointment is issued but for all other practical purposes or services, viz. leave etc Godown-keepers are treated as Bank employees. It was next urged that the services of Shri Mandal were terminated with the concurrence of the Treasurer. Shri Bhatnagar further stated that there was nothing on the record to show as to whether one month's notice was served upon him prior to the termination of his services and the only intimation given to him was one of 31st August 1949. It was also alleged that Shri A. L. Mandal joined the Bank's service on the 1st August 1945 but he was not made permanent upto 31st August 1949, and that in his case no notice was necessary nor any payment was to be made in lieu of notice. It was admitted that the prior permission of the Tribunal for the discharge of this employee under Section 33 was not obtained, but it was maintained at the same time that in his case, permission of the Tribunal was not necessary.

Now the contention of the Bank representative viz., that prior permission under Section 33 was not necessary as the applicant was a nominee of the Contractor Cashier, and not an employee of the Bank is untenable and must fail in the light of the directions given by the All India Industrial Tribunal (Bank Disputes) in their award 'that the employees of the Cash Department are as good employees of the Bank as others' vide page 61 para. 136 of the Award. Judged on this principle, this claim must succeed. But the applicant, did not turn up and it is not known as to whether he has since been re-employed or not; and under these circumstances, I would only direct that if he chooses to come within one month from the date when this award becomes effective, he be taken back into service without any payment of salary etc. for the intervening period.

Now, Therefore, This Tribunal Makes its award in terms aforesaid this the 10th Day of April 1951.

K. S. CAMPBELL-PURI,

Chairman,

Central Government Industrial Tribunal, Calcutta.

[No. LR-90(115).]

S.R.O. 645.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to publish the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between Messrs. Tata Iron and Steel Company, Limited and the workmen employed in their collieries in respect of the revised rates of wages for main drivers.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD

Reference No. 9 of 1950

PRESENT

Shri S. P. Varma, Barrister-at-Law, Chairman, Central Government Industrial Tribunal.

APPEARANCES

For the Management:

Shri D. Narsingh, Chief Personnel Officer, Collieries of Tata Iron & Steel Co. Ltd.

For the Workmen:

Shri Kantl Mehta, General Secretary, Indian National Coalmine Workers' Federation Dhanbad.

AWARD

By a Notification No. LR.2(296), dated, 21st November 1950 the Government of India in the Ministry of Labour has referred this dispute to this Tribunal for adjudication in the following terms:

"Whereas an industrial dispute has arisen between Messrs. Tata Iron and Steel Company Limited and the workmen employed in their collieries in respect of the revised rates of wages for main drivers;

And whereas the Central Government considers it desirable to refer the dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to refer the said dispute for adjudication to the Central Government Industrial Tribunal at Dhanbad, constituted under section 7 of the said Act."

2. Before dealing with the matter in dispute it is necessary to explain as to what is meant by the term "Main Driver". This expression is not to be found in the Indian Mines Act. But it has been explained to me by the parties that "Main Driving" is the operation of driving a "pilot tunnel" in advance of the main tunnel in coal. Ordinarily in Tata Collieries the main tunnel (or gallery) in coal is driven 7 to 8 feet high and between 12 to 16 feet wide. The 'main' or the 'Pilot Tunnel' is, however, driven only 5 feet high and 3 feet wide. Later on this is widened to the size of an ordinary gallery.

3. It appears that this dispute is due to certain steps taken by the management. On 21st November 1949 certain modifications were introduced in the rates of payments for hand cut mains. This is to be found in Annexure B of the written statement filed by the workmen. I would keep the same number in this award and I will attach this as Appendix "B" to this award. This modification was with regard to 6 and 7 pits. There was a further notification which is attached to the statement of the workmen as Annexure "A" and I shall call it Appendix "A" to this award. This is dated 20th January, 1950. The case of the workers is that by the new rates the management have replaced the through or telescopic rates by slab rates and no dearness allowance has been allowed for the main rates. This has affected adversely both with regard to their bonus and Provident Fund. The footage that was given for machine cut gallery was also stopped. The workmen further point out that the main drivers of the six collieries namely Jamadoba, Digwadih, 6 and 7 Pits, Sijua, Bhelatand, Malkera-Choitodih have been affected by this change. They have also produced charts to show the old rates prevailing in the different collieries and the rates paid for side dressing in the different collieries and the rates paid for footage in machine cut galleries at 6 and 7 pits. It is further contended by the workmen that it has not only affected the income of the main drivers but it is likely to hamper the production and development of the mine. They dwelt upon the arduous nature of the work that

is being carried on by the main drivers. On this point I may say that I inspected a main at Bhelaland and I am of opinion that a main driver has to work under difficult conditions. In conclusion the workmen submit that this reduction of rates of wages of main drivers has been arbitrary and illegal. They also emphasise the fact that the management had admitted that there was a mistake when they reduced the old rates of hand cut gallery which they restored later on. The prayer of the workmen is that it should be declared that the reduction of rates of main drivers was illegal; that it should be restored with retrospective effect, and that the dearness allowance and other benefits should be paid to the main drivers.

4. The management on the other hand contend, after giving the description as to what is meant by main driving, that the main driving is not an essential operation for the purpose of developing the galleries. The work is done by using picks or by coal cutting machines and that hardly one per cent. of the total strength of miners is connected with this work. They further point out that the total number of mains driven in their collieries vary from 3 to 5 and these mains are also likely to be stopped in the near future. It is also pointed out that for the usual development by picks or coal cutting machines, the miners get the wages at the rates in vogue for hand-cut or machine cut coal. When, however, the underground conditions require the progress of work to be faster, mains are driven and the miners are paid an incentive bonus based on the footage driven during the week. Such bonus is not in lieu of their wages, but is in addition to the usual tub rate for coal. They further contend that the system of main driving is not an essential operation by which the industry has to develop. It is further contended that this extra payment over their regular wages does not amount to regular wage but it is a sort of incentive bonus. They emphasise the fact that main driving is not necessarily an essential operation in coal mining and

"that the management has not compelled the Main Drivers to work at the revised rates of the incentive bonus but has given them the option of driving mains at the new rates of incentive bonus in addition to their usual wages as miners or working as ordinary pick miners without driving mains. The Management has not forced out of employment the miners working as Main Drivers for refusing to continue to drive Mains at the revised rates. These are miners who continue to work as ordinary pick miners in the same galleries though they refused to drive these galleries as mains at the revised rates of incentive bonus."

They admitted that the payment of footage rate for side dressing after the mains are driven has been stopped. The miners can work as ordinary miners on side dressing which is easy coal and the additional incentive is no longer necessary. They deny that the introduction of the new rates paid to the main drivers has hampered the progress of the mine. They also deny the fact that this reduction has reduced the number of working faces. They further submit that no retrenchment had been made of the miners which would have been inevitable had the progress in the collieries suffered and the working faces reduced. It is further denied that they have acted illegally by contravening any of the provisions of the Conciliation Board's Award or the Joshi Agreement. They also submit that the main drivers have been receiving their incentive bonus at the new rates without any protest whereas the workmen say that they took it under protest. They therefore pray that the prayer of the main drivers to restore the *status quo* before the changes were introduced should be dismissed.

5 Before dealing with the main case I may mention that there was a petition dated 9th January 1951 filed by Shri Kanti Mehta on behalf of the workmen which purported to be under Section 33 of the Industrial Disputes Act 1947. According to that application it was prayed that an interim award may be passed by the Tribunal till the final disposal of the main reference. The order I passed on that application was that I should like to hear the applicant before passing any orders. On hearing him on 11th January 1951 the Tribunal passed the order that the matter should be taken up at the time of the hearing of the main case. At the time of hearing, this matter came up but Shri Mehta rightly conceded that strictly speaking this application did not come within the purview of that Section. The contention of the management was that the Notification referring this dispute was dated 21st November 1950 and the changes introduced by the management were as early as 1st February 1950. Therefore no question of introducing any change during the pendency of the proceedings arises, and Section 33 of the Industrial Disputes Act 1947 does not apply.

6. Coming now to the main case, in view of the written statements filed by the parties as well as the arguments advanced by them during the course of the hearing, the following points arise for consideration.

- (1) Whether the remuneration of the main drivers has been reduced by the management in the collieries under them.
- (2) Whether the slab rates instead of telescopic rates and the stopping of payment for the side dressing of the main have affected them prejudicially.
- (3) Whether the action of the management is illegal or unjustified.
- (4) What should be the nature of the award by this Tribunal.

7 So far as the first point is concerned there is no doubt that looking at the appendices attached to this Award as well as the various other documents placed before the Tribunal the remuneration of the main drivers as main drivers has been reduced.

8. So far as the second point is concerned the slab rates have been introduced in order to avoid corruption according to the statement of Mr. Engineer, Deputy Superintendent of Tata Collieries who was examined as a witness in this case. He gave his reasons for coming to that conclusion and he has not been shaken in cross-examination, and said that the extra money also has been stopped because that part of the work is being carried on as miners and not particularly as main drivers

9. The third point to be considered is the most important in this case. Whether the action of the management by introducing the changes early in 1950 is illegal or unjustified. A lot of arguments were advanced before me.

10. Firstly the workers wanted to show that the extra payment to the main drivers was in the nature of wages. Whereas the management contended that it was in the nature of an incentive bonus. The workers relied upon the definition of wages in the Payment of Wages Act 1936 and referred to that particular phrase which says:

"2 (vi)... and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable"

They say that as this payment came within the definition therefore it amounts to wages. But the management on the other hand contended that looking at Section 7 (1) (b) of the Industrial Disputes (Appellate Tribunal) Act 1950 it is clear that wages are distinguishable from bonus because both terms occur in the same section. I am afraid that this line of argument whether it is wages or whether it is bonus does not really solve the problem before this Tribunal. Even if for the sake of argument we take it that it is wages does the action of the management come within any of the provisions of the Payment of Wages Act 1936, which prohibits such reduction. In the first place the question arises whether it is a case of reduction of wages. What the management has done is that although formerly they were paying higher wages to the main drivers they by an order passed early in 1950 wanted to change that rate. They have not in any way touched the wages earned before this order was passed. All that they have done is that they have notified to the workers that in future their payments should be according to the new scale. Shri Mehta urged that this was a reduction in wages and therefore it was illegal. But I am afraid the Payment of Wages Act does not put a bar on an employer from entering into a new contract with the employees and this is really a case which to me looks like the introduction of a new contract about the rates of payment of wages in place of the old. There is nothing illegal in that. The other argument advanced was that this action of the management was likely to hamper production and development of the mine. On this point we have got the evidence of Mr. Engineer, Deputy Superintendent of Tata Collieries whose evidence I have no reason to doubt is of great importance. He says that when the Tata Collieries had not sufficient number of coal cutting machines the management felt that main driving should be done by hand. Now-a-days, he says, that the Tata Collieries have got a sufficient number of machines to look after the production as well as development side. He also says that main driving by hand is not so essential now as it was before. Therefore the management thought that the re-adjustment of rates was justified under the present conditions. To a specific question put in the course of his cross-examination as to whether the reduction in the number of mains was likely to impede progress or development he said that neither production nor progress had suffered in any way. On the question of telescopic rate *versus* slab rate he says that it has not affected the workers prejudicially but the new system would prevent corruption.

In the course of the cross-examination he was asked whether it would not be proper to reduce the number of mains instead of reducing the rates of the main drivers. He replied that the rates depended upon supply and demand. From his evidence it further transpires that this main driving by hand is not required so much in the Tata Collieries and that this process may be stopped at any time. The number of mains driven by the management is getting less and less.

11 The management say that they have not retrenched any of the miners who refused to work as main drivers on the new rates. On the other hand, Shri Mehta representing the workmen says that the workmen who worked on main driving worked under protest. The management says that there was no such protest from the workmen. The main drivers are primarily miners. They have not been deprived of their work as miners nor has their remuneration which they were entitled to been touched and that no steps were taken by the management against those who refused to work on the main driving. One has to remember always that the main drivers are primarily miners and if they do this extra work they get the extra payment.

12. In view of these materials I am of opinion that the new rates that have been introduced are neither illegal nor unjustified. In this view of the matter I am of opinion that the prayer of the workers to restore the old system of rates cannot be acceded to. I would give my award accordingly.

Now, therefore, the Tribunal makes it award in terms aforesaid.

S. P. VARMA, Chairman,
Central Government Industrial Tribunal, Dhanbad.

DHANBAD;

Dated the 31st March 1951.

APPENDIX 'A'

ANNEXURE 'A'

True Copy

The Tata Iron & Steel Co. Ltd.,

20th January 1950.
sd/- B. H. Engineer
Through Dy. S. C. Jmd.
Through Agent.

JMB67/23

All Managers.

With effect from 1/2/50 the following standard rates of main driving will come into effect in all our collieries.

The rates, in future, will be slab rates and not through rates as at present. No. D. A. or any other allowance, will be paid on the main rates.

(1) All level mains including the level connections of dip and rise mains:

1 foot to 10 feet	....	Rs. 0-12-0 per foot.
11 feet to 15 feet	....	Rs. 1-0-0. per foot.
16 feet to 25 feet	..	Rs. 1-8-0 per foot.
26 feet & above	....	Rs. 2-0-0. per foot.

(2) All dip mains:

1 foot to 5 feet	....	Rs. 0-12-0. per foot.
6 feet to 10 feet	....	Rs. 1-0-0. per foot.
11 feet to 15 feet	....	Rs. 1-8-0. per foot.
16 feet & above	....	Rs. 2-0-0. per foot.

(3) All rise mains:

1 foot to 7 feet	....	Rs. 0-12-0 per foot.
8 feet to 15 feet	..	Rs. 1-0-0. per foot.
16 feet to 20 feet	....	Rs. 1-8-0, per foot.
20 feet & above	....	Rs. 2-0-0. per foot.

The size of the main should ordinarily be restricted to 5'×37'. No rates should be paid to side dressing after the main is driven

If the Main Drivers are allowed to load out the coal from the main gallery, they should be paid at the machine cut coal rates and not at the hand cut rates.

In future, no machine cut gallery should be driven as main.

If any main requires special rates to be paid, the matter must be first discussed with agents who would take permission from the office before the rates are sanctioned.

Please see that the above rates are gradually introduced with immediate effect. If necessary, few of the not very important mains can remain stopped for a few weeks.

Sd. S. C. GHOSH,
Superintendent of Collieries.

APPENDIX 'B'

ANNEXURE 'B'

True Copy.

The Tata Iron & Steel Co. Ltd.

Jamadoba, 6 & 7 pits.
21st November 1949.

No. J/36/2031.

The following should be noted in connection with Hand-Cut main rates:—

(a) Level Mains:—

No payment for progress less than 10 feet.		
Up to 15 feet	....	R. 1/-
From 16' to 25'	....	Rs. 1/8/-
From 26' and above	....	Rs. 2/-

All Slab rates and not through rates

Diagonal mains.

No payment for progress less than 7 feet.		
7 feet	....	Rs. 1/-
From 8' to 15'	....	Rs. 1/8/-
From 16' to 25'	....	Rs. 2/-

All slab rates and not through rates.

&

No. D. A. to be paid in near future, mains to be started only after receiving a written sanction from the Agent of the group.

(b) Payment of main gallery rate will be at the rate of loaders i.e. loading rate will be paid as in machine section.

(c) No side-dressing payment to be made except under exceptional cases with Agent's permission.

(d) Machine cut gallery should not be paid extra as footage.

Sd. R. N. SHARMA, Manager,
6 & 7 Pits, Jamadoba.

RNS/Ges.

Copy to Asst. Manager, 6 & 7 pits.

Copy to Asst. Surveyor, 6 & 7 pits.

6 and 7 Pits Jamadoba,
23-11-49

J/

Memo No 36.

Copy to all miners' Sardars, for information.

RKG: G.P.M.

Sd./ Illegible.
Asst. Manager.
[No. LR.2(296).]

ORDERS

New Delhi, the 25th April 1951

S.R.O. 646.—Whereas an industrial dispute has arisen between the Allahabad Bank Ltd., and its workmen in respect of the matter specified in the Schedule hereto annexed:

And whereas the Central Government considers it desirable to refer the dispute for adjudication:

Now, therefore, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to refer the said dispute for adjudication to the Industrial Tribunal at Calcutta constituted under section 7 of the said Act.

SCHEDULE

Whether the termination of the services of Shri Purshottam Das Tandon from the Mirzapur Branch of the Bank on or about the 5th July 1950 was justified and if not whether he should be reinstated or suitably compensated.

[No. LR-90(74).]

New Delhi, the 27th April 1951

S.R.O. 647.—Whereas industrial dispute has arisen between Messrs Tata Aircraft Ltd. at Titaghur Air Depot and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to refer the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7 of the said Act.

SCHEDULE

1. Whether the employees are entitled to a gratuity calculated at the rate of one month's pay per year of service in addition to the compensation bonus already allowed.

2. Whether the one month's notice pay allowed should include both basic pay and dearness allowance.

[LR-2(338)]

S. NEELAKANTAM, Dy. Secy.

New Delhi, the 25th April 1951

S.R.O. 648.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to publish the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the management of the Chirimiri Colliery and their workmen.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD.

Reference No. 6 of 1950.

PRESENT: Shri S. P. Varma, Barrister-at-Law, *Chairman.*

PARTIES: The management of the Chirimiri Colliery

AND

Their Workmen.

APPEARANCES.

For the management: Shri C. B. Bhagwat, Secretary,

The Ballarpur Collieries Company Ltd.

For the Workmen: Shri R. L. Malaviya, M.P., President,

Chhatisgarh Colliery Workers
Federation, Manendragarh C.P.

AWARD

By a notification No. LR.2(196)/I of 16th October 1950, the dispute between the management of the Chirimiri Colliery and their workmen was referred to this Tribunal for adjudication in the following terms:

"Whereas an industrial dispute has arisen between the management of the Chirimiri Colliery and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the dispute for adjudication;

1136

Now, therefore, in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act 1947 (XIV of 1947), the Central Government is pleased to refer the said dispute for adjudication to the Central Government Industrial Tribunal at Dhanbad, constituted under Section 7 of the said Act.

SCHEDULE

1. Supply of uniforms to chowkidars and Peons.
 2. Change over from monthly rated to weekly rated in the case of certain categories of staff.
 3. Payment of wages to screen coolies as in the case of trammers.
 4. Fixation of scales of pay for Assistant Magazine Clerks.
 5. Supply of cooking oil and sugar.
 6. Revision of the scale of pay of power House and Boilers-in-charge.
 7. Payment of wages for 2½ days for those who worked on the 15th August 1950.
 8. Payment to surface trammers at As. 11 instead of As. 9.
 9. Monthly paid shot-firers, chowkidars and peons to be given the same facilities as other monthly paid staff.
 10. Overtime to workers for work on holidays and rest-days with retrospective effect.
 11. Revision and increase of wages for pole-men, timber-cutters and P. W. Gang.
 12. Payment of arrears to the basic cut from the salary of the staff.
2. The case has been argued with a good deal of acumen and zeal on both sides. As there are various issues in this case I do not propose to give a summary of the case of the parties before dealing with the issues. I shall refer to the respective cases made out by the parties while dealing with every particular issue.

3. *Issue No. 1.—Supply of Uniforms to Chowkidars and Peons.*—In the statement of the workmen it is mentioned that it was conceded by the management in the Tripartite Conference held on 18th July 1949 through their representative Shri C. S. Mukherjee, Manager, Chirimiri Colliery. They refer to paragraph 15 of the minutes of the Conference signed by the Regional Labour Commissioner (Central), Dhanbad. Paragraph 15 runs as follows:

“It was agreed that two sets of uniforms should be given every year. A new set could be given in return for the old one.”

It is contended by the workmen that this agreement was not implemented by the management and the management admit that it has not been implemented. This demand was made again in another conference held on 18th August 1950. In this Conference the management's representatives refused to honour the previous agreement. The management on the other hand, urged that what is mentioned as an agreement of 18th July 1949 could not be called so. Because the Manager was not a competent person to agree to it as the estate was under a Receiver. The management further add that warm clothes have not been specifically mentioned in the workmen's statement of claim and that blankets are provided for workers who have to perform duty at night and also to chowkidars. Shri Registrar supplemented the argument of Shri Bhagwat representing the management, by saying that there is a great difficulty in securing summer clothes now-a-days. The question of supply of uniforms to chowkidars and peons is a matter which really concerns the employers. The moment that they feel that the work of the colliery is suffering because of non-supply of uniforms, I am sure they will start supplying uniforms to their workmen when they feel inclined to do so. In the Korea Award also there is no mention of uniforms to chowkidars and Peons nor any special provisions made in that Award. It is true that when Shri B. K. Ghosh, Manager, Kurasia Colliery was examined as a witness by the workmen he said that uniforms were provided to peons and chowkidars for both winter and summer. But he was talking of his own colliery which is a State owned colliery distinct from the market collieries. The practice prevailing in a Government Colliery cannot be used as a precedent in market collieries. On the materials before me I am of opinion that a case for the supply of uniforms to chowkidars and peons has not been made out.

4 Issue No. 2.—Change over from monthly rated to weekly rated in the case of certain categories of staff.—The Federation point out that in the case of firemen, loco-drivers, screen drivers, coal-cutting machine drivers and fitters, switch-board and sub-station attendants, fan house drivers, workshop and electric fitters, trolley-wire and bondmen in charge and Assistant Armature binders etc. who were appointed as monthly rated many years back and some of them having served for 18 or 20 years have been brought down to weekly rated. Secondly the privileges and facilities enjoyed by the monthly paid staff in the matter of scale of pay, leave, water supply etc. were curtailed. In the course of the argument Shri Malaviya representing the workmen mentioned the case of carpenters but it is not to be found in the written statement of the workmen. He further says that this demand was referred to in the Tripartite Conference held on 19th August 1950 but it was refused by the management of the colliery. The workmen claim that the above categories of workers should be restored to monthly rates and that if there be any difference in the pay they should be paid the difference retrospectively from the date of reversion to up-to-date. There are some workers of the categories mentioned above who were appointed on weekly rates long ago and they are now entitled to change over to monthly rates according to the representative of the workmen. In the course of his argument Shri Malaviya representing the workmen referred to Ex. 1 (Shri Bose's report) and has also complained that those workmen whose rates were fixed by the Controller's orders in November 1946 and whose maximum was reached on 1st November 1950 should get a higher scale of pay from that date. The management on the other hand replied that the reasons given by the workmen for reverting to monthly rated system are rather vague. In their annexure A-7 the management show the salaries paid to different categories of workers who were converted from monthly to weekly paid ones. They have quoted the rates of November 1946 and November 1947 as monthly paid and weekly paid workers. They have showed by their figures that those who are being paid now as weekly are actually receiving more than monthly paid workers. For example a fitter whose basic was Rs. 25 with dearness allowance as Rs. 10 was getting Rs. 35 per month on the whole. But now on the daily rated weekly paid system he is getting Rs. 1-4-0 as basic wages, As. 8 as Dearness allowance, the total he gets per day is Rs. 1-12-0; calculated on the basis of 26 days a month he gets Rs. 45-8-0 per month. Similarly in the case of loco-driver I find that in the year 1946 he was getting Rs. 33 whereas in January 1947 he was getting Rs. 41-0-6. Of course there is an instance of a fan driver whose basic was Rs. 24 and his total pay was Rs. 34 in November 1946 but he got Rs. 31-11-0 in January 1947. That is the only instance in which I find that the payment has been reduced. The management however say that they had resorted to this method in many cases on account of an order passed by the Controller of Collieries on 14th November 1946. This is marked as annexure A-8 by the management. Of the categories mentioned by the Federation workshop fitters and Electricians were the only regular monthly paid staff, enjoying the privileges of regular monthly paid staff. Other categories were daily rated monthly staff that is to say they were paid once in a month calculated on the day to day work and they were not entitled to the privilege of sick leave, casual leave etc. as in the case of regular monthly paid staff. They were however given overtime for the extra work done by them. The coal cutting machine drivers and fitters were daily rated weekly paid throughout. The posts of Trolley wiremen, Bondmen, Assistant Armature Winder, were created after the change over and they were taken on daily rated weekly paid basis after the change over ordered by the Government Controller. The management rely on Annexures A-9 and A-10 attached to their statement. They further urge that under the Controller's order these categories of the staff benefited by way of increment in their wages and they were allowed 10 day's leave in the year. The monthly paid staff who were not entitled to overtime in a way got increment for overtime. It is further submitted by the management that this point should not be allowed to be raised by the Federation when this change was ordered by the Government. The management contend that the claim of the Federation that some of the old workers who have put in 20 years service and have all along been on weekly pay sheets are entitled to change over to monthly rated basis is not tenable. The management further say that these employees position have not changed with other employees position. Some of the categories of the staff are always on the daily rated weekly basis. Korea Award does not make any such recommendation. One of the chief reasons advanced in opposing the suggestions of the Federation is that what the management did they did under Government Controller's orders. Shri Bhagwat representing the management in the course of his argument by supplementing the written statement of the management refers to Annexure A-8 and said that much depends upon efficiency and not upon mere seniority. In the case of monthly paid workers the position is different. He emphasised the fact in the course of his argument that Annexure A-7 shows that the workmen were actually gainers by the change at the time of

change over. It is further added by Shri Bhagwat that converting the weekly rated workers to monthly rated system it might lead to loss in production and ultimately raise the cost of production. There seems to be a good deal of force in the argument of the management and taking into consideration the fact that the rates were fixed by the Controller I am of opinion that the change over from weekly to monthly rated workers could not be allowed. I give my award on this issue accordingly.

5. *Issue No. 3 and 8—Payment of wages to screen coolies as in the case of trammers.*—Payment to surface trammers at As. 11 instead of As. 9.

The case of the workers is that the surface trammers in every other colliery in the area were getting As. 11 per day within the provisions of the Korea Notification. But the management of the Chirimiri Colliery were paying As. 9 per day which is the wages of an ordinary mazdoor. This question was dealt with by Shri A. C. Bose, Inspector of Mines, Madhya Pradesh in the case of Jhagra Khand Colliery. In his report dated 18th February 1949 he writes on item No. 9 at page 6 as follows:

"9. *Rate for surface trammers.*—The rate for trammers at the quarries as laid down in the Notification is As. 11 per day. At present trammers are paid the wages of an ordinary labourer. As surface trammers and trammers in quarries are to do the same kind of work, they should be paid As. 11 per day. The management agreed to this payment."

The management of Jhagra Khand Colliery agreed to pay As. 11 per day to surface trammers. They refer to another instance of a similar nature in North Chirimiri Colliery where the rate has been fixed at As. 11 for the surface trammers. They contend further that the screen cooly (mazdoor) or screen man should also be paid at the same rate as the surface trammers. The management on the other hand, contend that there is a good deal of difference between screen coolies and surface trammers. The duty of the screen coolies is simply to pick up shale, earth, stone etc. from the screen-belt. In Chirimiri Colliery, there are no surface trammers and quarry trammers as quarry is being worked at Chirimiri. They further point out that in the Korea Award the trammers have been divided into two categories namely, underground and quarry trammers. There is no mention of the surface trammers in that Award. In the Chirimiri Colliery tubs are filled by underground trammers who are paid actually As. 12 per day. The shunting and pushing of the loaded tubs are done by an Electric Locomotive. Hence the management say that the demand of the workmen that the screen coolies should be designated as surface trammers, who should be paid As. 11 instead of As. 9 is not only unjust but it is likely to create trouble among the trammers themselves. They further point out that the general rate of screen coolies is more than the ordinary surface coolies as mentioned in the Korea Award. In the interest of the screen coolies themselves it was agreed by the Government officials as well as the Federation not to press the point. The management refer to Annexure A-13 and A-14 of their statement. Paragraph 4 of Annexure A-13 is important and it is a report by the Manager of the colliery in which he says:

"In the interest of the general strength of screen coolies, their rates need not be revised and to this the Conciliation Officer agreed."

In annexure A-14 which is dated 4th May 1950 where it was again repeated that Shri Malaviya and the Conciliation Officer had agreed that the question of surface trammers' wages need not be considered. In his evidence Mr. Thompson witness No. 1 for the employers says that the work of screen coolies is actually not like that of a trammer. They do not touch the tubs but only link the tubs to the locomotive to take away to the tippler. On this point he has not been cross-examined by the representative of the Federation. Again the witness No. 2 for the employers Mr. S. R. Sabhlok, Manager, Pure Chirimiri Colliery, says that he would not call a screening mazdoor as a trammer. In answer to a question by the Tribunal whether a screening cooly could in any way be described as a trammer he answered in the negative. The evidence of Shri B. K. Ghosh, Manager, Kurasia Colliery, examined on behalf of the workmen is also important who states that there is no designation as screening mazdoor in his colliery. On these materials I am of opinion that a screening cooly's work is different from that of trammers and therefore they are not entitled to the same rate of wages as trammers.

But the question remains (Issue No. 8) as to what the pay of surface trammers should be. The management has distinctly said that there are no surface trammers and quarry trammers in Chirimiri. If there are surface trammers I do not see why they should not get As. 11 instead of As. 9 as proposed by the Korea Award.

On the evidence before the Tribunal it is not clear whether there are surface trammers in the colliery. We are concerned here only with the surface trammers and not quarry trammers. My award on this point is that if there are surface trammers they should be paid As. 11 as is being paid by other collieries in the area as per the Korea Award. If there are none the question does not arise

6. *Issue No. 4.—Fixation of scales of pay for Assistant Magazine clerks.*—The Federation in its written statement says that they were called assistant through an oversight. They are really magazine clerks. Their monthly pay is Rs. 20-1-30, and they claim that they should be brought on the level with the clerks in the neighbouring collieries where payment is comparatively higher. They say that in Kurasia they are paid in the scale of Rs. 55-4-85-E.B.-5-130. In Ponri Hill Colliery it is the same. They filed Ex. 1 to explain annexure A-17 filed by the management. Shri C. B. Bhagwat appearing on behalf of the management, on the other hand, urges that the scales of pay of different categories of workers have been fixed according to the Controller's order No. 28/ESTB/BC/2105, dated the 14th November 1946. It is said by the management that the grade of the Magazine clerk is Rs. 20-2-30 and not Rs. 20-1-25 as stated by the Federation. They further say that the clerks mentioned by the Federation have studied upto the Matric standard at least. The Assistant Magazine Clerks have studied upto 3rd or 4th standard only and their duty is to issue explosives and to maintain the issue register. They further say that they are not responsible for the safety of the explosive articles for which an armed Guard is specially provided. Considering the nature of the work carried on by these persons who are designated as clerks it is doubtful if they can come within the description of a clerk. Some witnesses were examined in this Reference at Chirimiri and I find from the statement of Shri Ghosh, Manager, Kurasia Colliery, which is a Government Colliery, that people who carry on similar work are known as explosive issuers in his colliery. He also says that they maintain a difference in the pay between the store clerk who is paid according to the Central Pay Commission recommendations and the explosive issuers. I may mention that while the Tribunal was at Chirimiri I went and saw the nature of the work carried on by the Magazine Clerk on 20th February 1951. In view of the foregoing materials I am afraid that the pay of the Assistant Magazine clerks cannot be interfered with.

7. *Issue No. 5—Supply of Cooking Oil and Sugar.*—According to the statement of the Federation they claim that mustard oil should be supplied at the rate of As. 12 per seer and sugar should be supplied at the rate of As. 6 per seer. So far as the mustard oil is concerned they refer to the rates prevailing in Kurasia and Jhagra Khand Collieries where it is sold at As. 10/3 and As. 11 per seer respectively. They further claim that it should not be more than As. 12 on any account. With regard to sugar they say that originally it was sold at the rate of As. 6 per seer but it was then increased to As. 12 and then to market rate. As against this the management refers to the Korea Award at Paragraph 7 and says that the recommendations of the award were that the concessions should not be less than As. 6 per day per person and for five days to a week. The position is that the question of giving concessions to the dependents of employees was left to the discretion of the colliery Manager. Management's representative referred to Annexure A-18 to their statement and showed the loss between April 1950 to September 1950 to be As. 6-4½ ples per worker. Shri Mukherjee on the other hand points out that grainshop concessions and consumer goods were being given as provided in the Korea Award. The increase in the selling price of cooking oil and sugar was due to the higher purchasing price of these commodities. The management refers to paragraph 11 of the minutes of the meeting of 18th July 1949 where it is mentioned:

"The employers, should, supplies permitting, issue to the workers and their dependents all these commodities....."

(I have underlined the important expression).

They further submit that this principle was accepted by the Federation in their letters No. CW.514/49 of 27-8-49, CW 662/49 of 23-11-49 and in letter No. 66/A/5503 dated 9th November 1949, the Manager of the colliery has explained the difficulties in respect of procurement of commodities. Shri Mukherjee further adds that when oil was issued at As. 12 it was purchased at Rs. 1-10-0 a seer. Now it is being issued at Rs. 1-10-0 a seer although it is being purchased at Rs. 2-8-0 per seer. As sugar was not a controlled article difficulty was experienced in procurement. That is why the management was supplying at controlled price. At Kurasia also sugar and oil are being supplied at cost price. In the present difficult conditions prevailing with regard to these commodities I find it difficult to order that the workmen should be supplied at the price at which it was originally charged by the management.

8. *Issue No. 8.—Revision of the scale of pay of Power House and Boilers-in-charge.*—There are only 4 workmen involved in this issue. They are one first class and three second class certificate holders as boilers-in-charge. The Federation says in its written statement that as compared to the other collieries the rate in this colliery is very low. They point out that in Kurasia the same type of workmen are paid Rs. 85 to 130, the increment being Rs. 5 per annum upto Rs. 80 and Rs. 10 upto Rs. 130. As against this the management urges that there is no such post as Power House in charge or Boiler in charge since the introduction of the C.P. and Berar Boiler Act and Rules which were made applicable to the Korea State in 1948 which requires a 'certified' boiler attendant to be in charge of the boiler plant and this fact was brought to the notice of the Conciliation Officer by the management in their letter which is Annexure A-22 of their written statement, dated 4th May 1950. The management also point out that one Jagadish Prasad was only a boiler attendant and not a boiler in charge or Power House in charge. For the post of Power House in charge and of Boiler in charge more qualified and experienced persons are to be appointed according to the C.P. Berar Boiler Act and Rules. These are designated as Electrical and Mechanical Chazeman in the grade of Rs. 100—5—120 whereas the grade of Boiler Attendant is Rs. 30—5—50 only. The scale which has been quoted by Shri Malaviya representing the workmen, as prevalent in Kurasia, is with regard to Power House Shift in charge. The management also refer to certain decisions arrived at the meeting of the 19th August 1950 (Tripartite Conference) where Shri Sharma, Assistant Superintendent of Collieries, Kurasia, gave his opinion that the pay of boiler attendant is to be from Rs. 35 to 60 and therefore an increment of Rs. 5 was sanctioned by the management to Shri Jagadish Prasad. In the meeting of 19th July 1949 before the Regional Labour Commissioner the matter was left to the discretion of the employers. The Regional Labour Commissioner also pointed out that this was a matter to be left to the Sub-Committee to be appointed by the Government to submit a report on this point, and the management was not justified in revising the scales of pay as suggested by the Federation. This being the position I am afraid that I would not be justified to pass an order to revise the scales of pay as suggested by Shri Malaviya representing the Federation.

9. *Issue No. 7.—Payment of wages for 2½ days for those who worked on the 15th August 1950.*—So far as the written statement of the workmen is concerned they have claimed 2½ days normal wages for those workmen who worked on 15th August 1950. They based their claim upon a resolution adopted by the Indian Mining Federation, Indian Mining Association, and the Indian Colliery Owners Association in the case of holidays for 26th or 27th January 1950. They also point out that it is supported by Joshi Agreement and the Standing Orders. They also refer to other matters as mentioned in their written statement at para. 7(b) and (c) which are not included in the Government notification referring the dispute and I would not take notice of them. Although the management have replied to the points raised by the Federation the management says with regard to August 15th 1950 that it was not declared as paid holiday by the Government nor any circular was received by the management from any quarter. They further say that the management received intimation to observe a closed holiday on that day only that is on 15th August itself and if they declared it a holiday at the 11th hour they would incur a loss by closing the colliery. They further urge that the intimation did not specify whether it was a paid holiday or not, but it mentioned as if it were an ordinary holiday. The management refers to two letters dated 10th August 1950 and 12th August 1950 which are Annexures A-26 and A-27. But in Annexure A-26 dated 29th May 1950, I find that it was recommended that workmen who worked on 26th or 27th January 1950 should be paid 2½ times their normal wages as the case may be. It is not very clear why this distinction was drawn between the 15th August and the 27th January 1950. I am of opinion that considering the importance of the occasion the management should have followed the principles laid down in Annexure A-26 to their statement of claim. I therefore hold that those workmen who worked in this colliery on 15th August 1950 are entitled to 2½ days wages (consolidated) as prayed for by the workmen.

10. *Issue No. 9.—Monthly paid shot-firers, chowkidars and peons to be given the same facilities as other monthly paid staff.*—The workmen point out in their written statement that it was agreed in the Tripartite Conference held on 19th August 1950 that the management would allow all facilities under the regulations. The Federation also say that the shot-firers have been allowed 55 days leave in a year but their grade has not been fixed as in the case of the monthly paid staff. In case of Chowkidars and peons etc. no action has so far been taken. These categories of monthly paid workers are allowed 7 days leave in the year. Their holidays, grade and other facilities and privileges it is prayed by the Federation be awarded in terms of other monthly paid staff. It was pointed out in the course

of argument that the shot-firers get 10 days leave and Chowkidars and peons get 7 days in the year counting all the leaves. In the case of other monthly paid workers the privilege leave is one month, sick leave is 15 days, and casual leave is 10 days. The peons and chowkidars have been put in the category of menials. In the course of the argument Shri Malaviya pointed out that the grade is not fixed for weekly paid whereas the grade of the monthly paid staff was fixed. He further added that at present the shot-firers who have passed the minimum qualifications prescribed by the management get Rs. 33 and the unpassed shot-firers get Rs. 27. It is prayed that they should be put in the grade of Rs. 55—5—80—E.B.—10—130 as is being paid at Kurasia. The Chowkidars and peons are also to be as in the Kurasia Colliery. Shri Bhagwat on behalf of the management refers to Annexure A-8 and says that the rate fixed by the Controller, for Chowkidars and Peons is Rs. 18—1—25 but with the addition of dearness allowance and bonus the total comes to much more. He also points out that Annexure A-8 gives the pay that is given to the staff and A-28 lays down the leave rules and the rate of travelling allowances. He further adds that at the Tripartite Conference the promise was to act according to the rules and regulations. The management have been paying according to the work done according to A-8 and giving all the privileges mentioned in A-28. So far as the Chowkidars and peons are concerned Shri Bhagwat agreed to raise their leave from 7 days to 14 days in the year. This is quite a reasonable attitude and without interfering with the other items I would order that the privilege leave for the chowkidars and peons should be raised in Chhirmiri Colliery from 7 days to 14 days after 12 months continuous service. It will be seen that A-28 deals with various type of workers namely those who are the ordinary monthly paid workers and those who are daily rated but paid monthly. This is the only change I would like to introduce.

11. *Issue No. 10—Overtime to workers for work on holidays and rest days with retrospective effect.*—In their written statement in paragraph 10(A) the workmen submit that the chowkidars are not allowed rest and holidays and therefore they are entitled to one day's off every week. It is further added that the workmen are entitled to wages at $1\frac{1}{2}$ times their wages with retrospective effect from 24th September 1948 on which date a decision was taken in the Tripartite Conference and the relevant proceedings of the conference are as follows:

"Payment for overtime.—The workers Federation complained that in some of the collieries $1\frac{1}{2}$ times the normal wage was not paid as overtime wage. It was agreed that this would be done."

Shri C. S. Mukherjee, Manager of the Colliery, represented the management in the above mentioned Conference, and the Federation pressed that this may be allowed and arrears paid from the above date. In paragraph 10(B) of the workmen's statement it is suggested that some of the chowkidars had to work at the rate of 12 hours a day but on the representation of the Federation their hours of work were reduced to 8 hours. They are entitled to overtime of 4 hours per day at $1\frac{1}{2}$ times with retrospective effect from 24th September 1948. As against this the management replied that no such provision was made in the Korea Award or in the Payment of Wages Act and that the draft standing orders have not been duly certified yet. Therefore they have not been made applicable to the collieries as yet. The management did not accept the position arrived at in the meeting of the 24th September 1948 because the estate was under a Receiver and the Receiver alone could speak on behalf of the colliery. It is also pointed out that the Manager started paying full shift's wages of eight hours for those who work on rest days only for $5\frac{1}{2}$ hours. From June 1950 overtime wages of $1\frac{1}{2}$ times as provided in the Draft Standing Orders are being paid at the colliery. Paragraph 6 of the Draft Standing Orders deals with this question and there provision is made for working on rest days and payment of $1\frac{1}{2}$ times the normal wages and for other days. This practice which has been introduced from June 1950 is in keeping with the request made by the workmen. The only trouble is that they want the overtime to be paid retrospectively from 24th September 1948. I am not inclined to meet this part of the request because to my mind it is doubtful whether the Manager was authorised to represent the management before the Tripartite Meeting when the estate was under the Receiver. So far as the hours of work of the Chowkidars is concerned it is clear that their hours of work has been reduced to 8 hours. What happened in the past need not be opened up now. I therefore dispose of the issue in the light of the observations made above, that is to say, for work on holidays and rest days etc. and overtime rate should be $1\frac{1}{2}$ times the usual rate. If this practice is being followed by the management it is well and good. If it is not followed it should be followed by the management from the date of the publication of this award.

12. *Issue No. 11—Revision and increase of wages for pole-men, timber cutters and P. W. gang.*—The Federation says that this matter was taken up before the Regional Labour Commissioner on 19th August 1950. Some informations that were asked for were supplied to the Regional Labour Commissioner at that meeting. The work of these type of workmen is a hazardous one and therefore in some cases the contractors pay their workers a higher wage than those given by the colliery. Therefore the Federation say that the workmen should be paid at least As. 12 per day. The definite statement of the workmen is that the P. W. gang under the contractors get As. 12 as basic wage whereas under the direct management of the colliery they are getting As. 10 only per day. The pole-men and the Timber Setter employed by the colliery are getting As. 11/3 and As. 10 respectively. They say that they should get at least As. 12 per day. As against this the management point out that the wages to these workers are paid according to the revised scale mentioned in the Korea Award, and the question of further revision or modification should be left to the discretion of the management. They further say that the Regional Labour Commissioner had advised the Federation accordingly in his note dated 18th July 1949, against point No. 6. This matter should be left to the discretion of the employers. Evidently they refer to the statement of the 18th July 1949 meeting that:

"It was agreed that the matters could not be taken up till it had been decided as to whether Korea Award or C.P. Fact Finding Committee's Report was to apply to these collieries. In accordance with the instructions of the Hon'ble Minister for Labour, Government of India, a tripartite meeting was to be held to decide this issue. Steps had been taken up in the direction and the authorities would be asked to expedite."

The above observations were made while dealing with the question of scales of pay. The claim of the workers seems to be based chiefly upon the fact that the work is of a hazardous kind. The only other point that they have made out is that the contractors are paying higher wages to similar workmen than what the colliery is paying. They specifically refer to P.W. gang. On that point if these types of workers are being paid according to the recommendations of the Korea Award I do not find any definite reason given by the Federation for increasing the wages except in the case of P.W. gang under the contractors who are getting As. 12 per day as basic and under the direct management of the colliery they are paid As. 10 per day. If that is so, then the sooner the anomaly is removed the better. The matter for further revision or increasing the wages should ordinarily be left to the discretion of the management as advised by the Regional Labour Commissioner. In view of the hazardous nature of the work that is being carried out by these types of workers, I think an additional *anna one* per day to the P.W. gang in their basic wage ought to satisfy the workers of that type specially when they are paid higher by the contractors. I give my award on this issue accordingly.

13. *Issue No. 12—Payment of arrears to the basic cut from the salary of the staff.*—This demand has been divided into two parts. Firstly, workers say there are number of employees both underground and surface whose salaries and wages were cut at the time of implementation of the Korea Award. They point out that this should not have been done. In settling the wages 12½ per cent. as per para. 2 of the Korea Notification should be added to their salary before 15th November 1947. Then this should have been treated as basic and then their dearness allowance calculated. For example the salary of a Raising in Charge was Rs. 55 before November 1947. After the implementation of the Korea Award his basic salary was reduced to Rs. 41, dearness allowance paid was Rs. 30 and therefore he gets a total of Rs. 71. Now according to the Federation his pay should have been continued at Rs. 55 and dearness allowance to be added is Rs. 36-10-0 to the basic salary of Rs. 55, making a total of Rs. 91-10. This was not done by the management and therefore the workers were losing Rs. 20-10-0 per month. He is also losing Rs. 56 of bonus. Therefore he was losing something like Rs. 303-8-0 per annum. I have taken this typical case and I am afraid that this line of argument does not appeal to me, because the sum of Rs. 55 did not represent the basic wage. The line of argument followed by Shri Malaviya appearing for the Federation seems to be this that taking the total that was being paid before 1947 as the basic pay and then work the dearness allowance in accordance with that. This does not seem to be the correct way of approaching the question. The management point out that there was no such cut in the basic wages but it was brought to the notice of the management that the raising contractors were not showing dearness and basic salary separately before the introduction of the Korea Award. Later on after some discussion with responsible officers the figures were split up. Then the increase as provided in the Award in both basic and Dearness allowance were given to all the staff. This evidently satisfied the workers and no serious objection was taken about this procedure. As was pointed out by the

Regional Labour Commissioner the deduction of wages as referred to in this issue falls within the purview of Section 15 of the Payment of Wages Act 1936 and the matter should have been dealt with by the officers authorised to deal with such matters and not before this Tribunal. With regard to the second category of workers such as coal cutting machine drivers, and fitters, the complaint is that they were getting a basic wage of Rs. 1-11-0 before 1947 on an eight hours shift but they were asked to work 12 hours a day. The employees agreed to work 12 hours a day provided they are given overtime, but no overtime was given to them. In spite of that the basic wage was split up into Rs. 1-2-0 and As. 9 as their basic and overtime respectively. In 1948 the 8 hours shift was restored and the two amounts were consolidated as basic. The workmen contend that they should have got 12½ per cent. increase on their basic wage of Rs. 1-11-0 from 15th November 1947. The dearness allowance should be calculated after this addition. Therefore the claim of the workmen is that the arrears of overtime from the date of cut in the basic till the restoration and the arrears of wages and dearness allowance and bonus calculated after the addition of 12½ per cent. to the basic wage of Rs. 1-11-0 be paid to them. As against this the management replies that previously the coal cutting machine drivers were working 12 hours and wages were paid accordingly. After the introduction of the Korea Award they were given 12½ per cent. increase in their basic wage and were paid for 12 hours work at that time. But after the merger of the Korea State in 1948 their working hours were reduced to 8 hours a day. But no reduction was made in their wages. The management refers to Annexure A-32 which runs as follows:

"A machine driver before the Award used to get Rs. 1/2 as basic wage and Rs. -/10/3 as Dearness allowance totalling Rs. 1/12/3. After the Award he was paid Rs. 1/2 as basic wage and Rs. 1/2 as Dearness allowance for some time. Increment of wage having not been made, to workers having basic wage more than Re. 1 daily. But as he was made to work at that time for twelve hours a day, he was being paid Rs. 1/2 as basic wage; Rs. 1/2 as Dearness allowance and Rs. 1/2 for extra four hours work, totalling Rs. 3/6. But as twelve hours work became a tabon, and as the Machine Drivers were not in a mood to accept less than Rs. 3/6 even for eight hours work, he was paid Rs. 3/6 a day—Rs. 1/11 as basic wage and Rs. 1/11 as Dearness allowance. This continues to be the present rate."

Looking at the materials before me in connection with this cut in the basic wages of the workmen I am afraid that there is not enough material upon which I can hold that there was a cut in the basic wages. The workers if so advised may as pointed out by the Regional Labour Commissioner move in the matter under Section 15 of the Payment of Wages Act 1936. I give my award on this issue accordingly.

I, therefore, give my award in terms aforesaid.

S. P. VARMA, Chairman,
Central Government Industrial Tribunal.

DHANBAD;

Dated the 12th April 1951.

[No. LR-3(149)I.]

S.R.O. 649.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to publish the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the management of the Jhagrakhand Collieries and North Chirimiri Colliery and their workmen on the question of payment of loader's wages on the basis of loose coal.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD
Reference No. 10 of 1950

PRESENT

Shri S. P. Varma, Barrister-at-Law, Chairman.

PARTIES

The managements of the Collieries;

1. Jhagrakhand Collieries.
2. North Chirimiri Colliery.

AND

Their respective workmen.

APPEARANCES

Shri R. L. Malaviya, M.P.,

President, Chhatisgarh Colliery Workers' Federation, Manendragarh, M.P.

(For the workmen).

For the Managements: Shri Lahiri, and Mr. Hearn for the Jhagrakhand Collieries.

Shri J. R. Chandra, Labour Officer, North Chirimiri Colliery.

AWARD

By a notification No. LR.2(196)-J, dated 5th December 1950 this dispute was referred to this Tribunal for adjudication in the following terms:

"Whereas an industrial dispute has arisen between the managements of the collieries mentioned in the schedule hereto annexed and their workmen on the question of payment of loader's wages on the basis of loose coal;

And whereas the Central Government considers it desirable to refer the dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act 1947 (XIV of 1947), the Central Government is pleased to refer the said dispute for adjudication to the Central Government Industrial Tribunal at Dhanbad, constituted under section 7 of the said Act.

SCHEDULE

1. Jhagrakhand Collieries.

2. North Chirimiri Colliery."

3. The dispute is with regard to the question of payment of loaders wages on the basis of loose coal. Two collieries mentioned in the notification are involved in this Reference and they are North Chirimiri Colliery and Jhagrakhand collieries. Shri J. R. Chandra, Labour Adviser, North Chirimiri Colliery, on behalf of the North Chirimiri referred to two documents filed on behalf of the workers in North Chirimiri colliery saying that there was no dispute between the management and the workmen. He says that there was no dispute connected with North Chirimiri.

The document on which he relies were filed in connection with Reference No. 5 of 1950 in the file of this Tribunal. They were marked as Ex. A1 in that Reference. But they have been referred to in this Reference also. One document is on behalf of the staff who say that they never requested the Federation or any union to raise any disputable point with the management. There are seventeen signatories to this document. The other is on behalf of the workers. There are about 107 signatories who say that they are not members of the Chhatisgarh Colliery Workers Federation nor of any other Union. This is in continuation of the document filed by the staff, in which it is said that they never authorised the Federation or any Union to raise any disputable point with the management. These documents have been proved by Shri D. D. Didee, Agent, North Chirimiri Colliery whose statement is to the effect that all the signatures of all the workers in Ex. A1 were taken in his presence and that the signatures were of the persons whose names were mentioned as persons signing. Shri Chandra relying on these documents refers to:

(1) Labour Law Journal page 875, Vol. I, April to December 1949,

(2) The Calcutta Gazette, dated 17th February 1949 at page 286 and 287,

(3) The Calcutta Gazette, dated 1st March 1951 at page 487, 495 and 496,

and says that the Reference to this Tribunal of this case is incompetent as there is no dispute between the workmen and the employers.

3. At first I was impressed by this argument but looking at the documents Ex. A1 of Reference No. 5 of 1950 which has been treated as a part of this Reference also the matter is not so simple as it appears at first sight. The heading of the documents under which the clerks have signed runs as follows:

"We the members of staff of North Chirimiri colliery hereby declare that we are neither members of the Chhatisgarh Colliery Workers Federation nor of any other Union. We did never request any union or Federation for raising any disputable point with the management."

and the heading of the document which the workers have signed runs as follows:

"We the undersigned workers of North Chirimiri Colliery hereby declare that we are neither members of Chhatisgarh Colliery Workers' Federation or of any other Union."

4. Now from the headings of the above two documents on which so much reliance has been placed by the representative of the North Chirimiri Colliery, all I can notice is that the signatories declare that neither they are members of the Chhatisgarh Colliery Workers' Federation nor of any other Union. Of course in the first document they say that they have not requested the Federation or any other Union for raising any disputable point with the management. But these headings do not show in so many words that there is no dispute with regard to the rate of loading of coal in the colliery. Before the Government Notification was published the case had to pass through various stages before the Conciliation Officer, Regional Labour Commissioner, Chief Labour Commissioner, as is apparent from the Order Sheet of the records of the Regional Labour Commissioner. Then they came to the conclusion that there was a dispute between the workmen and their managements with regard to the measurement of coal which they load, whether it should be in the loose or in the solid.

5. I am of opinion, that in the face of these materials, the Tribunal would not be justified in coming to the conclusion that there is no dispute between the North Chirimiri Colliery and its workmen. No such question arises in the case of the other colliery namely Jhagrakhand collieries. I would therefore hold that the Reference is not incompetent.

6. Coming now to the main case the dispute is whether the payments to the loaders be made by taking the size of the solid coal into consideration or the loose coal into consideration in view of the Korea Award. Now the relevant portion of the Korea Award runs as follows:

"Now, therefore, the Korea State Government after a careful consideration of all factors affecting the industry in the State and in order to assure minimum wages to colliery workers hereby orders as follows:

(i) **MINIMUM BASIC WAGES TO BE PAID TO WORKERS FOR AN 8 HOUR SHIFT.**

(1) **Coal Cutters:—**

(a) *Underground*: At a rate of Re. 1 per

(i) 100 c.ft. in case of machine cutting.

(ii) 25 c.ft. in case of hand cutting.

(iii) 45 c.ft. in case of solid blasting.

Note.—All measurement to be in the solid.

(b) *Quarries*: At a rate of As. 12 per

(i) 60 c.ft. in case of blasting.

Note.—Measurement to be made in the loose.

(ii) **Loaders:**

(a) *Underground*: At a rate of As. 14 per 100 c. ft. of coal loaded from the working face.

(b) *Quarry*: At a rate of As. 10/6 per 100 c.ft. of coal from the working face."

The rest of the award is not of much importance in this case.

7. As there is no note as mentioned in the case of coal cutters in connection with the rates of the loaders the workmen argue that the measurement should be in the loose. The managements on the other hand contend that it should be in the solid. The difference between solid coal and loose coal is about 50 per cent. I noticed at the time of my inspection at Chirimiri that a measurement to loose coal was taken in a tub which was 5'×3'×3' and then this 45 c.ft. was reduced to 30 c.ft. and payments made on that 30 c.ft. Now the question which arises for consideration is whether this method of calculation of wages by converting the loose coal into its solid size is correct. This matter came up before the Chief Labour Commissioner, Government of India, and he expressed his opinion as follows:

"The foot note that clarified the nature of the coal (whether in solid or in loose) in the case of coal cutter, is left out in the case of coal loaders presumably as not necessary. The clause (ii) of the terms of the award which refers to underground loaders laying down the rate as 'annas -/14/- per 100 c.ft. of coal loaded from the working place' is clear for all, practical purpose. The words 'coal loaded' cannot but be coal 'in loose' coal loaded. Coal loaded clearly means that measurement has to be taken only after the coal is loaded. (A clear case of

tense in the grammar of the English language). Loading can be done only after the coal is cut and in loose.

Therefore the loaders have to be paid in terms of loose coal only."

8. There is a good deal of force in the opinion expressed by the Chief Labour Commissioner. The most plausible argument, that was advanced on behalf of the employers was by Mr. Hearn of the Jhagrakhand Collieries who said that the meaning of the award is that the measurement of coal should be in solid. He said further that the same coal that is cut is also loaded. Therefore as the measurement of cutting is in solid so measurement of loading should also be in solid. It is a plausible argument but the workers in the mines are paid according to the nature of the work they do. In the case of coal cutters the cutting is in solid coal, and in the case of loaders the loading is of loose coal. So the loader is handling loose coal and he is being paid for that. His payment should be upon the amount of loose coal that he has handled. If for example the original coal that had to be loaded was in a very loose condition or powdery condition and occupied something like 60 c.ft., but by pressure and heat its size was reduced to 45 c.ft. Then when it is to be handled by the loader how should the payment to the loaders be made. Would it be for the 45 c.ft. that the loaders are handling or for 60 c.ft. which was the original size before it was reduced to 45 c.ft. by pressure and heat or some other means. The answer certainly is that they should be paid for the volume actually handled by the loaders. Some light on this question is thrown by the Notification in the neighbouring State of Rewa. That Notification is dated the 23rd January 1948. It was issued a little more than two months after the date of the Korea Award of the 15th November 1947. In that Rewa Notification while dealing with the rate of loaders after giving the rates of underground as well as the quarry loading there is a note in the notification that measurement should be in loose. Shri A. C. Bose Inspector of Mines, Circle No. 1, was examined in this case. He submitted his report Ex. 1 of this Reference. He is also of the same opinion. He says:

"When the coal cutter cuts coal he cuts solid coal. Therefore it is quite in order that the coal cutter is paid in solid. When the loader loads he loads loose coal, broken or blasted down by the coal cutters, into the tubs supplied."

He refers in his report Ex. 1 to certain amendment to the Korea Award but unfortunately that amendment, dated 16th December 1947, was not seen by him. Therefore his evidence based upon the Korea Award as amended by that amendment is not of much value. But a copy of that amendment was seen by Shri Bose which was shown to him by Shri Malaviya, President, Chhatisgarh Colliery workers' Federation. That copy even is not before the Tribunal. As a man of experience in mining, however, Shri Bose's view on the question whether payment to loaders should be for loose or for solid coal is entitled to much weight. That amendment was not produced before the Tribunal by either of the parties and the Tribunal asked for a copy of the same from the Kurasia colliery manager. By his courtesy an amendment, dated 15th December 1947 has been sent to this Tribunal. But that does not help us in solving this problem.

9. Taking the opinion of the Chief Labour Commissioner of the Government of India, Shri A. C. Bose, Inspector of Mines (Circle No. 1), Rewa State Notification, and the general nature of the operation of loading, I am of opinion that the Korea Award, while dealing with the loaders, was dealing with the coal for measurement in loose and not in solid (as suggested by the employers). I would therefore give my award that the payment to the loaders be made on the basis of measurement of loose coal handled by them.

I therefore give my award in terms aforesaid.

S. P. VARMA, Chairman,
Central Government Industrial Tribunal.

DHANBAD;

Dated the 12th April 1951.

[No. LR-3(149)II.]

S.R.O. 650.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to publish the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the managements of North Chirimiri, Chirimiri, Sajapahar, Jhagrakhand Collieries and Pondri Hill and their respective workmen in respect of grant of railway fare and scales of pay of clerks.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD

Reference No 11 of 1950

PRESENT

Shri S. P. Varma, Barrister-at-Law, *Chairman*.

PARTIES

The managements of the Collieries:

1. North Chirimiri, 2. Chirimiri, 3. Sajapahar, 4. Jhagra Khand Collieries (Group), Ponri Hill.

AND

Their respective workmen

APPEARANCES

For North Chirimiri—

Shri J. R. Chandra and Shri Dharam Vir.

For Chirimiri—

Shri C. B. Bhagwat.

For Sajapahar—

Shri S. K. Bose, Barrister-at-Law, instructed by Khaitan & Co.

For Jhagra Khand Collieries (Group)—

Mr. Hearn and Shri Lahiri.

For Ponri Hill, New Chirimiri—

Mr. Registrar.

For the Workmen—

Shri R. L. Malaviya, M.P., President, Chhatisgarh Colliery Workers' Federation, Manendragarh, M.P.

AWARD

By a Notification No. LR.2(196)-II, dated 5th December 1950, the Government of India in the Ministry of Labour has referred this dispute to this Tribunal for adjudication in the following terms.

"Whereas an industrial dispute has arisen between the managements of the collieries mentioned in Schedule I hereto annexed and their workmen in respect of the matters specified in Schedule II hereto annexed;

And whereas the Central Government considers it desirable to refer the dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act 1947 (XIV of 1947) the Central Government is pleased to refer the said dispute for adjudication to the Central Government Industrial Tribunal at Dhanbad, constituted under Section 7 of the said Act.

SCHEDULE I

1. North Chirimiri. 2. Chirimiri. 3. Sajapahar. 4. Jhagra Khand Collieries (Group). 5. Ponri Hill.

SCHEDULE II

1. Grant of Railway Fare for workers going on leave. 2. Scales of Pay of clerks."

2. It will be noticed that the collieries concerned are five in number. They are North Chirimiri, Chirimiri, Sajapahar, Jhagra Khand collieries and Ponri Hill known as New Chirimiri colliery. The workmen were represented by Shri R. L. Malaviya, M.P., who is the President of the Chhatisgarh Colliery Workers Federation. In the written statement the workmen claim that railway fares should be awarded as follows:—

- (1) To the labour and other weekly paid staff

- (a) at the time of their recruitment, and

- (b) subsequently every time when they go home on leave after the expiry of one term of three months.

- (2) To the monthly paid staff and the rest of the workmen.
 - (a) subsequently every time when they go home on earned leave.
- (3) In both the cases of leave, railway fare to the family members of the workmen be also awarded.
- (4) In cases where journey by workmen is undertaken by bus or other conveyances fare for the same along with the family be awarded.
- (5) the class of travel be awarded according to the rule applicable to Government servants.

3. From the above list of demands made in the written statement of the workmen, it appears that the schedule to the Government Notification has not been adhered to. The Notification of Government refers to grant of railway fare for workers 'going on leave' whereas from the written statement it is apparent that a number of other items have been included which have not been referred to this Tribunal. In support of his claim Shri Malaviya has referred to the Conciliation Board's award para. 27 at page 450 of the Gazette of India, dated 12th May 1947 and the Joshi Agreement and the conciliation proceedings at paragraph 10 before the Conciliation Officer. He also referred to some observations made by the Dhanbad Tribunal in Reference No. 8 of 1948 and Reference No. 1 of 1949. The managements on the other hand, uniformly resisted the claim put forward by Shri Malaviya on the ground that this matter has not been covered by the Korea Award which these collieries follow and that no railway fare has been prescribed by that Award to the workmen. The written statement of the North Chirimiri Colliery also pointed out that in the Tripartite Meeting held in Chirimiri on 17th February 1950 the Korea award was accepted by all including the President of the Chhattisgarh Colliery workers' Federation. The same statement further point out that there is no question about the demand of railway fare to the members of the family of workers or the staff members of the workmen. Jhagra Khand collieries have placed similar objections. They point out that it is not the practice or custom to pay railway fare to the workmen in this colliery nor in the neighbouring collieries. This fact has been mentioned in the written statement of the workers themselves. The Sajapahar colliery raises similar objections and emphasises the fact that the Korea Award prescribes no railway fares to the workmen. The Ponri Hill (New Chirimiri Colliery) emphasises that an introduction of the system of payment of railway fare to the workmen would be an innovation which might cause serious trouble in the future.

4. Looking at the Korea Award it is clear that no reference has been made with regard to the payment of railway fare to the workmen. The collieries whom the Korea Award affected while following that Award have not been giving railway fare to their employees. It is true that there are certain types of workers who are recruited from outside and they are known as Gorakhpur labour. In their cases railway fare under certain conditions is being given. The demand by the workmen here in this case is quite different. While referring to the Conciliation Board Award and Joshi Agreement which was arrived at in order to clarify certain doubts with regard to the contents of the Conciliation Board Award, it may be noted that the members of that Board have carefully worded the observations made in paragraph 27 after taking into account the fact that:

"That the industry has no objection to this being met."

The Joshi Agreement can be mentioned as an authority if railway fares are to be paid to workmen who are going on leave. Even Shri Dubey who was examined for the workmen says that even in the case of Gorakhpur labour they are paid after they have worked for 11 months. The condition of recruitment of Gorakhpur labour is governed by other considerations than that of an ordinary labourer working in the mines with which we are concerned. I am afraid the claim for the payment of railway fare for workers going on leave in the face of the Korea Award and the practice prevailing in these collieries and the neighbouring collieries which are governed by the Korea Award, an award in favour of the workers as claimed by them cannot be given.

5. The next issue is with regard to the scales of pay of clerks. So far as this issue is concerned I am afraid the workmen have not been able to make out a case. In the course of argument however it was pointed out that the lowest pay of a clerk was Rs. 20 and the highest pay was Rs. 110 and the claim is that the lowest should be Rs. 55 and the highest pay for the workmen should be Rs. 300. Evidently they were thinking in terms of the Pay Commission Report's recommendations which is not applicable to the type of clerks we are dealing with in these cases. I have gone through the statement of the workers and listened to the elaborate argument advanced by the workmen's representative Shri R. L. Malaviya who hardly placed

any materials before me for working out the scales of pay of clerks. In this connection I may also mention some of the statements made by the managements that the scale of pay of employees are all in accordance with the Korea Award. I refer particularly to the written statement of the Sajapahar colliery. They also point out that the written statement of the workmen evidently has mis-appreciated the extent of the reference in this connection. It will be noticed from the second item of Schedule II of the Government Notification that the Reference is with regard to the scales of pay of clerks but in the workmen's written statement it is dealt with as follows:

"The Federation prays that the scale of pay be awarded to all categories of workmen not covered by the Korea Notification in accordance with the scale of the neighbouring Government Railway Kurasia Colliery."

The above statement of the workmen show clearly that there was a serious mis-apprehension in the minds of the people responsible for their statement about the pay of clerks of the employees. It is true that at the time of argument a paper which was supposed to have been signed by the General Secretary of the Federation addressed to the Manager, Chirimiri Colliery, having their subject as 'Grievances of the Workmen' gives a proposed gradation list. But that paper by itself which has been marked as Ex.1 of the Tribunal cannot help us to settle this issue of scale of pay of clerks. Paragraphs 1 and 2 of the Conciliation proceedings held before the Regional Labour Commissioner runs as follows:

"It was agreed that the matters could not be taken up till it had been decided as to whether Korea Award, or C.P. Fact Finding Committee's Report was to apply to these collieries. In accordance with the instructions of the Honourable the Minister for Labour, Government of India, a Tripartite meeting was to be held to decide this issue. Steps had been taken up in the direction and the authorities would be asked to expedite."

6. Nothing has been placed before me to show as to what the result of this Tripartite meeting was. We get some light on the subject from the written statement filed by Ponri Hill colliery which says that the question about the scale of pay of clerks should be left to the decision of a Sub-Committee to be appointed by the Government of India under the Central Advisory Board and should not be allowed to be adjudicated upon in respect of an individual colliery. I am afraid if that is the situation the question that has been raised is premature and I would not like to give an award in favour of the clerks on the materials before me. There is another set of materials which throws a good deal of light upon the question whether there is any real dis-satisfaction among the clerks about their present pay. There are two papers, one Ex.A on behalf of the clerks filed by the Sajapahar Colliery and proved by Mr. Sabhlok and another marked as Ex.B filed on behalf of clerks of Jhagra Khand colliery and proved by Mr. Hearn. These two papers show clearly that there is no dis-satisfaction at least among the clerks of these two collieries about their scale of pay. It is true that Shri Malaviya in the course of the argument said that these papers might have been obtained by some sort of pressure. But I have no doubt in the face of the clear statement made in these two papers about the genuineness of the statements. I am not prepared to go merely on suspicion. On the materials before me I am afraid I cannot accede to the request of the workers and settle the scale of pay of clerks. The reference is disposed of accordingly.

I, therefore, give my award in terms aforesaid.

S. P. VARMA, Chairman,
Central Government Industrial Tribunal.

DHANBAD;
Dated the 12th April 1951.

[No. LR-3(149)III]
N. C. KUPPUSWAMI, Under Secy.

New Delhi, the 24th April 1951

S.R.O. 651.—In pursuance of Section 8 of the Coal Mines Labour Welfare Fund Act, 1947 (XXXII of 1947), the Central Government hereby appoints Mr. W. H. S. Michelmore, nominated by the Indian Mining Association, as a member of the Coal Mines Labour Welfare Fund Advisory Committee constituted by the notification of the Government of India in the Ministry of Labour, No. LW.3(1)47, dated the 24th May 1948, vice Mr. J. Latimer resigned.

[No. M.3(18)50]

New Delhi, the 27th April 1951

S.R.O. 652.—In exercise of the powers conferred by section 4 of the Mica Mines Labour Welfare Fund Act, 1946 (XXII of 1946), read with sub-rule (2) of rule 3 of the Mica Mines Labour Welfare Fund (Bihar and Madras) Rules, 1948, and in supersession of the notification of the Government of India in the Ministry of Labour No. LW-32(1)/48, dated the 10th February 1948, the Central Government hereby constitutes the Advisory Committee for the State of Madras consisting of the following members, namely —

- | | |
|--|---|
| (1) Shri B Joogappa, Collector of Nellore | Chairman |
| (2) Shri V Chenchurama Naidu, President of the District Board, Nellore | |
| (3) Shri K. Shanmugam, Member of the Madras Legislature | |
| (4) Shri O. Venkatachalam,
Conciliation Officer,
(Central), Madras | } Representative of the Central Government. |
| (5) Shri B Ramachandra Reddi | } Representatives of the mica mine owners of Madras |
| (6) Shri T. Ram Reddi | |
| (7) Shri Vedagiri Subbaramaih | } Representatives of the workmen employed in the mica mining industry of Madras |
| (8) Shri Gunji Pitchayya | |
| (9) Shrimati T. Munamma | Woman representative |

2. The Central Government hereby appoints Shri B Ramachandra Reddi, as the Vice-Chairman of the Advisory Committee

[No. LW-32(3)/49.]

New Delhi, the 30th April 1951

S.R.O. 653.—In exercise of the powers conferred by section 29 of the Indian Mines Act, 1923 (IV of 1923), the Central Government hereby directs that the following further amendment shall be made in the Indian Coal Mines Regulations, 1926, the same having been previously published as required by sub-section (1) of section 31 of the said Act, namely —

In the said Regulations for sub-regulation (2) of regulation 43, the following sub-regulation shall be substituted, namely —

“(2) Applications for a certificate under this regulation shall be chargeable with fees which shall be paid in the manner prescribed in regulation 153 according to the following scale, namely —

	Rs.
(a) in the case of a first class manager's certificate	25
(b) in the case of a second class manager's certificate	15
(c) in the case of a Surveyors' certificate	15"

[No M 41(14)50.]

P N SHARMA, Under Secy.

